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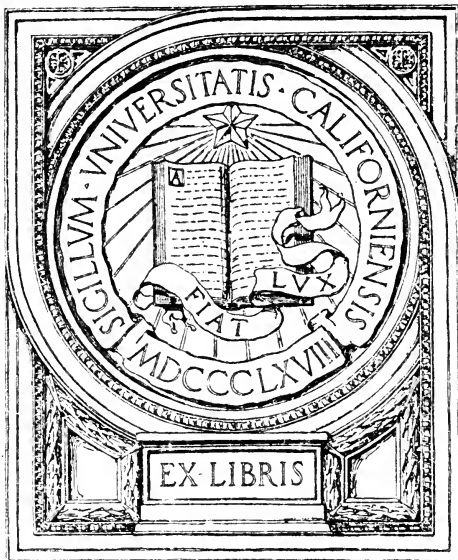
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THE ELECTION LAWS
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INCLUDING

**“REGISTRATION ACT” OF 1908 AND “CORRUPT
PRACTICES ACT” OF 1908**

WITH NOTES OF DECISIONS AND ORIGINAL ACTS AND

GENERAL INSTRUCTIONS

CONCERNING THE APPOINTMENT AND DUTIES OF

ELECTION OFFICERS



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PROVISIONS OF CONSTITUTION OF WEST VIRGINIA PERTAINING TO ELECTIONS AND OFFICERS.

ARTICLE IV.

Elections and Officers.

1. The male citizens of the State shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor or of unsound mind, or a pauper, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the State for one year, and of the county in which he offers to vote, sixty days next preceding such offer, shall be permitted to vote while such disability continues; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein.

2. In all elections by the people the mode of voting shall be by ballot; but the voter shall be left free to vote by either open, sealed or secret ballot, as he may elect.

3. No voter, during the continuance of an election at which he was entitled to vote, or during the time necessary and convenient for going to and returning from the same, shall be subject to arrest upon civil process, or be compelled to attend any court, or judicial proceeding, as suitor, juror or witness; or to work upon the public roads; or, except in time of war or public danger, to render military service

4. No person, except citizens entitled to vote, shall be elected or appointed to any State, county or municipal office; but the Governor and judges must have attained the age of thirty, and the Attorney-General and Senators the age of twenty-five years, at the beginning of their respective terms of service; and must have been citizens of the State for five years next preceding their election or appointment or be citizens at the time this Constitution goes into operation—[15 W Va. 234, 483; 20 W. Va. 89.]

5. Every person elected or appointed to any office, before proceeding to exercise the authority, or discharge the duties thereof, shall make oath or affirmation that he will support the Constitution of the United States and the Constitution of this State and that he will faithfully discharge the duties of his said office to the best of his skill and judgment; and no other oath, declaration, or test shall be required as a qualification, unless herein otherwise provided.

6. All officers elected or appointed under this Constitution, may, unless in cases herein otherwise provided for, be removed from office for official misconduct, incompetence, neglect of duty, or gross immorality,

in such manner as may be prescribed by general laws, and unless so removed they shall continue to discharge the duties of their respective offices until their successors are elected or appointed and qualified.—[43 W. Va. 595.]

7. (As amended—See Acts 1883, p. 137.)—The general elections of State and county officers and members of the legislature, shall be held on the Tuesday next after the first Monday in November, until otherwise provided by law. The terms of such officers, not elected, or appointed to fill a vacancy, shall, unless herein otherwise provided, begin on the first day of January; and of the members of the legislature, on the first day of December next succeeding their election. Elections to fill vacancies, shall be for the unexpired term. When vacancies occur prior to any general election, they shall be filled by appointment, in such manner as may be prescribed herein, or by general law, which appointments shall expire at such time after the next general election as the person so elected to fill such vacancy shall be qualified.

8. The legislature in cases not provided for in this Constitution shall prescribe by general laws, the terms of office, powers, duties and compensation of all public officers and agents, and the manner in which they shall be elected, appointed and removed.—[6 W. Va. 562.]

9. Any officer of the State may be impeached for mal-administration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. The House of Delegates shall have the sole power of impeachment. The Senate shall have the sole power to try impeachments and no person shall be convicted without the concurrence of two-thirds of the members elected thereto. When sitting as a court of impeachment the President of the Supreme Court of Appeals or, if from any cause it be improper for him to act, then any other judge of that court, to be designated by it, shall preside; and the Senators shall be on oath or affirmation, to do justice according to law and evidence. Judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold office of honor, trust, or profit, under the State; but the party convicted shall be liable to indictment, trial, judgment, and punishment, according to law. The Senate may sit during the recess of the Legislature, for the trial of impeachments.

10. Any citizen of this State, who shall, after the adoption of this Constitution, either in, or out of the State, fight a duel with deadly weapons, or send or accept a challenge so to do, or who shall act as a second or knowingly aid, or assist in such duel, shall, ever thereafter, be incapable of holding any office of honor, trust or profit in this State.

11. The Legislature shall prescribe the manner of conducting and making returns of elections, and of determining contested elections; and shall pass such laws as may be necessary and proper to prevent intimidation, disorder or violence at the polls, and corruption or fraud in voting, counting the vote, ascertaining and declaring the result or fraud in any manner, upon the ballot.

12. The Legislature shall enact proper laws for the registration of all qualified voters in this State."

CHAPTER 3 CODE.

ELECTIONS BY THE PEOPLE FOR STATE, DISTRICT, COUNTY AND OTHER OFFICERS.

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General Elections—When Held.

1. The general election for State, district, county and other officers hereinafter named, excepting municipal elections, shall be held on the Tuesday next after the first Monday in November, until otherwise provided by law.—[Const. 1863. Art. III, Sec. 7; Art. VII, Sec. 2; Const. 1872, Art. IV, Sec. 7; Acts 1872-3, ch. 118; 1882, ch. 155; 1885, ch. 2; 1891, ch. 89.]

Officers to be Elected, and When.

2. At the said election in the year one thousand nine hundred and

four, and every second year thereafter, there shall be elected delegates to the legislature, a senator for each senatorial district, and a commissioner of the county court. And in the year one thousand nine hundred and four, and in every fourth year thereafter, a governor, secretary of state, state superintendent of free schools, treasurer, auditor and attorney general for the state; a prosecuting attorney, surveyor of lands, sheriff, the number of assessors prescribed by law for each county, and the number of justices and constables in each magisterial district in the county, to which such district is entitled by law, to be from time to time ascertained and entered of record by the county court. And in the year one thousand nine hundred and eight, and in every sixth year thereafter, a clerk of the circuit court and a clerk of the county court. And in the year one thousand nine hundred and four, and every eighth year thereafter, one judge of every judicial circuit, except the first, and for the first circuit, two judges. And in the year one thousand nine hundred and four, and in every twelfth year thereafter two judges of the supreme court of appeals; and in the year one thousand nine hundred and eight and in every twelfth year thereafter, one judge of the supreme court of appeals; and in the year one thousand nine hundred and twelve and in every twelfth year thereafter, two judges of the supreme court of appeals.—[Acts 1863, ch. 100, Sec. 1; Const. 1863, Art. V, Secs. 1, 7; Art. VI, Secs. 4, 7, 15, 16; Art. VII, Sec. 5; Const. 1872 Arts. IV, VI, VII, VIII, IX; Acts 1872-3, ch. 118; 1875, ch. 66; 1882, ch. 155; 1883, ch. 1; 1891, ch. 89; 1903, ch. 21.]

3. Electors of president and vice-president of the United States shall be chosen by the voters of the State at the elections to be held for the purpose on the Tuesday next after the first Monday in November in the year one thousand eight hundred and ninety-two and every fourth year thereafter, and at least sixty days before every such election, the governor by proclamation published in some newspaper in every county where a newspaper is printed, shall give notice of the time of such election, and the number of electors to be chosen. And, on the Tuesday next after the first Monday in November, one thousand eight hundred and ninety-two and in every second year thereafter or until the congress of the United States shall otherwise provide, there shall be elected a representative in the congress of the United States, for the term beginning on the fourth day of March next after the election, for every congressional district.—[Const. U. S., Art. II, Sec. 1, cl. 2, 44; Acts, 1872-3 ch. 118; 1875, ch. 66; 1882, ch. 155; 1891, ch. 89.]

Magisterial Districts.

4. Each county shall be laid off by the county court into magisterial districts not less than three nor more than ten in number and as nearly equal as may be in territory and population. There shall be elected in each of said districts containing a population of not exceeding twelve hundred one justice of the peace and one constable; and, if the population of any such district exceed that number, two justices and two constables shall be elected therein. Such districts, as they now exist in each county, shall remain until changed by the county court. The county court may, from time to time, increase or diminish the number of such districts, change the boundary lines thereof, as necessity may require, in

order to conform the same to the provisions of the constitution of the State. But before such districts shall be increased, or diminished, or the boundary lines thereof changed, the said court shall cause a notice of its intention to do so to be posted on the front door of the court house of the county and at some public place in each district affected thereby, for at least thirty days prior to the term of the court at which such action is proposed to be taken. The words "county court" shall be construed to include every tribunal in lieu thereof, created under the provisions of section twenty-nine, article eight of the State constitution.—[Const. 1863, Art. VII, Sec. 2; Acts 1863, p. 116, 186; 1868, p. 112; Const. 1872, Art. VIII, Sec. 27; Acts 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

Election Precincts.

5. The county court of each county in this state shall, at their first session after the taking effect of this act, divide the magisterial districts of their respective counties into election precincts, number the same, establish the boundaries thereof, and designate at least one place of holding elections in each magisterial district. Every magisterial district, in which only one place of holding elections is designated, shall constitute a precinct. There shall be but one voting place in a precinct, which shall be established as near as possible at the place most convenient for the voters of the precinct. Each precinct shall contain as nearly as practicable, two hundred electors, based on the number of votes cast at the last election for presidential electors; but no precinct shall contain more than two hundred and fifty electors. If at any election hereafter two hundred and fifty or more votes shall be cast at any voting place, it shall be the duty of the county court to, and it shall at its next regular meeting after such election, divide such precinct as equally as possible, so that the new precinct formed thereof, or in part thereof, shall each contain two hundred electors, as nearly as practicable; but no precinct shall contain more than two hundred and fifty electors. If such county court fail to act as herein directed, any qualified voter of the county may apply for a writ of mandamus to compel a performance of this duty.—[Const. 1863, Art. VII, Sec. 4; Acts 1863, p. 71, 114, 115; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; 1893, ch. 25.]

6. The county court of any county may change the boundaries of any precinct within such county or divide any precinct into two or more precincts or consolidate two or more precincts into one, or change any place of holding elections, whenever public convenience or the public good may require it. And if by reason of the destruction of the house or structure at which a precinct election has been established or if for any other reason the election cannot be held thereat, and no provision has been made by the county court for holding the election at another place the commissioners of election at such place may hold the election at the place nearest thereto which they can secure for the purpose; and in such case they shall make known by proclamation to the voters assembled at such first named place of voting, the place at which the election will be held. And the county court shall, in such case, establish another place of voting for said precinct as soon thereafter as practicable.

Provided, That no precinct shall be so enlarged as to contain more

than 250 electors; and provided, further, that no such change, division or consolidation shall be made by the county court within ninety days next preceding an election, and provided further, that no such change, division, or consolidation shall be valid without giving due notice, at least one month before any election, by publication in two newspapers published in said county, if such there be, representing the two political parties which cast the highest number of votes in the State at the last preceding general election and by posters put up in four of the most public places in each precinct affected thereby.

The county court shall keep in a well bound book, marked "election precinct record," a complete record of all their proceedings in this and the next preceding section, and every order entered creating a precinct or precincts or establishing a place of voting therein. Said court shall, within ten days from the date of such order, cause to be published in two newspapers, if such there be, representing the parties casting the highest number of votes in the county at the last election of presidential electors, and posted at the front door of the court house.

Said "election precinct record" shall be kept by the circuit court clerk in his office and shall, at all reasonable hours, when not actually in use by the county court, be subject to inspection by any citizen of the county. —[Acts 1891, ch. 89; 1893, ch. 25; 1895, ch. 3.]

Commissioners of Election.

7. The county court of every county shall hold a regular or special session at the court house of their county, on the first Tuesday of the month next preceding the month in which any election is to be held, and shall appoint three qualified voters as commissioners of election for each precinct in their county. Said commissioners shall be persons of good standing and character and not addicted to drunkenness. They shall be selected from the two political parties which at the last preceding election cast the highest number of votes in the magisterial district in which the election is about to be held, and not more than two of them shall belong to the same political party. But if at any time during said session, the county executive committee or either political party from which said commissioners of election are to be selected or appointed, as is hereinafter provided for, shall present to the said court a writing signed by them, or by the chairman of said committee on their behalf, requests the appointment of a qualified voter of their political party, and who is otherwise qualified to act as such under the provisions of this section, it shall be the duty of the court to appoint the person named in such writing as such commissioner. Every writing so presented shall be filed, preserved and kept by the clerk of said court in his office. And if it shall appear that the said writing was a forgery, and that it was forged by the person presenting the same to the court, or that he presented the same to the court knowing it to be forgery thereof, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, or at the discretion of the court, he may be fined not less than one hundred dollars, nor more than five hundred dollars, and confined in the county jail not less than three nor more than six months. No person shall be eligible to appointment as a commissioner of elections, or in

any way to act as such, who has anything of value bet or wagered on the result of such election, or who is a candidate to be voted for at such election. If any of the commissioners of election shall fail to appear at the hour appointed for the opening of the polls, the remainder of the commissioners may select a member of his political party to serve in his stead. But if the qualified voters of his party present at the polls shall nominate a voter of his party, qualified to act under the provisions of this section, such nominee shall be appointed. If none of the commissioners of election shall appear at the hour appointed for opening the polls, the qualified voters present being at least ten in number, shall elect three commissioners of election to act in their stead, by a viva voce vote, not more than two of whom shall belong to or be elected by the same political party, as herein provided for. The commissioners of election acting at any such precinct election shall have power and authority to administer oaths, and to take and certify affidavits in relation to any matter or thing required or permitted to be done by any of the provisions of this act and the making of any such oath or affidavit by any person falsely, shall be perjury, and the party guilty thereof may be indicted, convicted thereof and punished therefor, as in other cases of perjury.—[Acts 1863, p. 116; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

Poll Clerks.

8. The commissioners of election of each precinct in their district shall appoint two poll clerks, one from each of the political parties which cast the largest number of votes at the last preceding general election in the State, and who are qualified voters in their district. But if the voters of either of said parties present at the election shall nominate, by viva voce vote a qualified voter of their party to act as poll clerk, such nominee shall be appointed. And in case a dispute shall arise as to the nomination so made, the commissioner or commissioners of election of the party to which such nominee belongs shall appoint such poll clerk. But no person shall be appointed a commissioner of election or poll clerk who has in his employ, or who as agent or superintendent has under his control or management, ten employes who are legal voters.—[Acts 1863, p. 116; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; *Snodgrass vs. Co. Ct.*, 44 W. Va. 56; *Dial vs. Hollandsworth*, 39 W. Va. 1.]

Poll Books.

9. The Clerk of the county court shall at the expense of the county, provide, and cause to be delivered to the commissioners of election or one of them, of the several precincts, at least three days previous to any election proper poll books containing one column headed "names of voters" and an additional column headed "number of voters" with the oath of the commissioners of election and poll clerks written or printed thereon or attached thereto, ballot boxes, tally papers, strong and durable envelopes for return and whatever else is necessary for holding the election and making due return thereof.—[Acts 1863 p. 117; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

10. Every poll book shall bear on the first page thereof the following heading: "Names of all persons voting at precinct No. — in the district

of ———, and county of ———, this ———day of ———, in the year ———.” Two such poll books with the names of all persons voting entered thereon shall be kept at every place of voting.—[Acts 1863, p. 119; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

Oaths of Election Officers.

11. Every commissioner of election, so appointed as aforesaid, shall before entering upon the discharge of his duties, take and subscribe an oath to the following effect:

State of West Virginia,

————— *County, ss.*

I, A— B—, do solemnly swear that I will support the constitution of the United States and the constitution of this State; that I will faithfully and impartially discharge the duties of commissioner of election assigned by law; that I will not knowingly permit any person to vote who is not qualified, and will not knowingly refuse the vote of any qualified voter, or cause any delay to persons offering to vote further than is necessary to procure satisfactory information of the qualifications of such person as a voter; that I have been a resident of the State of West Virginia for one year, and of the county and magisterial district in which I am to act as commissioner of election, for sixty days, next preceding this date; and that I will not disclose nor communicate to any person how any voter has voted at such election, nor how any ballot has been folded, marked, printed or stamped; that I have nothing of value bet or wagered upon the result of said election, and am not a candidate at this election

So help me God.

Subscribed and sworn to before me this ——— day of ———.

Every poll clerk, so appointed as aforesaid, shall before entering upon the discharge of his duties, take and subscribe an oath to the following effect:

State of West Virginia,

————— *County, ss.*

I, A— B—, do solemnly swear that I will faithfully and honestly discharge my duties as clerk of the election now about to be held in precinct No. ———, in the district of ———, county of ———, State of West Virginia, and that I will not disclose nor communicate to any person how any elector voted nor how any ballot was folded, marked, printed or stamped.

Subscribed and sworn to before me this ——— day of ———.

Said oaths may be taken before any person authorized to administer oaths, but if no such person be present at any place of holding an election they may be taken before and administered by any one of the commissioners of election so appointed, who in turn may take the same before another of said commissioners. Either of said commissioners may administer the oath to the poll clerk. The said oath shall appear properly certified on one of the poll books of every election. If any such commissioner or clerk shall enter upon the discharge of his duties before taking the oath so required of him he shall be guilty of a misdemeanor,

and on conviction thereof shall be confined in the county jail not less than sixty days, and fined not less than one hundred nor more than five hundred dollars.—[Acts 1863, p. 117; 1866, p. 123; 1871, ch. 114; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

Ballot Boxes.

12. The clerk of the county court shall, at the expense of the county, provide and cause to be delivered to the commissioners of election, or one of them, of the several precincts in his county, at least three days previous to any election, one ballot box for the reception of ballots for each precinct; each ballot box shall have at least two locks of different kinds and combinations, so that the key of one will not unlock the other and be otherwise so constructed as to contribute towards the prevention of fraud.—[Acts 1863, p. 117; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

13. An opening shall be made in the lid of each ballot box sufficient only for a single ballot; and at the time the election is opened the commissioners of election shall see that there are no ballots in the box before the voting begins, and shall thereupon securely lock the box and give one key to one of the commissioners who is in politics opposed to the commissioner who holds the other of said keys, and the box shall not be again opened until the polls are closed, and the commissioners ready to proceed with the counting of the ballots.—[Acts 1863, p. 117; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

When and How Polls Opened and Closed.

14. At every election the polls shall be opened on the day of such election as soon as practicable after sunrise but not before and shall be closed at sunset.—[Acts 1863, p. 118; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89. *Loomis vs. Jackson*, 6 W. Va. 707.]

15. Before any voter is permitted to vote, the commissioners of election shall cause to be proclaimed that such election is opened. When the polls are closed proclamation must be made*of the fact by one of the commissioners of election to the people outside in a loud and audible tone of voice and a minute of such proclamation, and of the time when the same was made, must be entered on the tally paper by the poll clerks, and after such minute has been made, no more votes shall be received.—[Acts 1891, ch. 89.]

Who Entitled to Vote and Where.

16. The male citizens of the State shall be entitled to vote at all elections held within the precincts of the counties in which they respectively reside; but no person who is a minor or of unsound mind, or a pauper or who is under conviction of treason, felony or bribery in an election or who has not been a resident of the State for one year and of the county in which he offers to vote for sixty days next preceding such election, and who is not at the time of the election an actual and bona fide resident of the election precinct in which he offers to vote, shall be permitted to vote at such election, while such disability continues; and no person in the military, marine or naval service of the United States shall be deemed a resident of this State, by reason of his being stationed there-

in; nor shall any person in the employment of any incorporated company, or of this State be deemed a resident of any county, or of any election precinct therein, by reason of being employed in said county or election precinct.—[Const. 1863, Art. I, Sec. 6; Acts 1863, p. 120; Const. 1872, Art. IV, Sec. 1; Acts 1871, ch. 114; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; 1893, ch. 25; Dryden vs. Swinburn, 20 W. Va. 89.]

Mode of Voting.

17. In all elections by the people the mode of voting shall be by ballot, but the voter shall be left free to vote by either open, sealed, or secret ballot, as he may elect. Otherwise, the mode and manner of voting shall be as herein prescribed.—[Const. 1863, Art. III, Sec. 2; Acts 1863, p. 118; Const. 1872, Art. IV, Sec. 2; Acts 1872-3, ch. 118; 1882, ch. 155; 1891 ch. 89.]

Conventions, Primary Elections and Certificates of Nominations to Public Office.

18. A convention within the meaning of this chapter, is an organized assemblage of voters, or delegates of any political party, for the purpose of nominating a candidate or candidates for public office, which, at the last general election before such convention, polled at least three per cent. of the entire vote of the State, or any division or sub-division thereof, for which the nominations are made, or have had nominations on the official ballot for the State or any division or sub-division thereof, for the last preceding ten years.—[Acts 1891, ch. 89; Acts 1901, ch. 61.]

19. A primary election within the meaning of this chapter, is an election held by voters who are members of any political party for the purpose of nominating a candidate or candidates for public office which at the last general election before the convention polled at least three per cent. of the entire vote of the State or any division or sub-division thereof, for which they are made.—[Acts 1891, ch. 89.]

20. Any convention or primary election as herein defined, held for the purpose of making nominations for public office, and also electors of president and vice-president of the United States, to the number herein specified, may nominate candidates for public offices to be filled by election within the State.—[Acts 1891, ch. 89; Marcum vs. Commissioners, 42 W. Va. 263.]

21. When a nomination of a candidate for public office is made by any convention, as herein specified, it shall be the duty of the presiding officer and secretary of such convention to certify the same and file the certificate thereof as hereinafter provided.—[Acts 1891, ch. 89; Marcum vs. Ballot Com., 42 W. Va. 263.]

22. When a nomination of a candidate for public office is made by any primary election as herein specified, which is to be filled by the voters of the entire county, it shall be the duty of the chairman and secretary of the county executive committee, representing the party for which the nomination is made, to certify the same. If the office is to be filled by the voters of any magisterial district, it shall be the duty of the chairman and secretary of the committee of such district, representing the party for which the nomination is made, to certify the same. Said certificates

shall be filed as herein provided.—[Acts 1891, ch. 89; Marcum vs. Ballot Com., 42 W. Va. 263.]

23. The certificate of nomination shall be in writing. It shall contain the name of the person nominated, his residence, and the office for which he is nominated, and shall designate, in not more than five words, the party, or principle for which such nominee shall represent. If the nomination be made by a convention, it shall be signed by the chairman and secretary of the county executive committee thereof; and if made by a primary election for an office to be filled by the voters of a magisterial district it shall be signed by the chairman and secretary of the committee thereof; and each person who signs such certificate shall add to his signature his place of residence and address.

Such certificate may be in the following form, or to the following effect, to-wit:

State of West Virginia,

_____, *County, ss:*

This is to certify that a county convention of the (here state the name of the party), held at _____ in and for the county of _____, on the _____ day of _____, in the year _____, for the purpose of nominating candidates for public office, the following nominations were made, to represent said party, to-wit:

FOR HOUSE OF DELEGATES.

A_____ B_____, residence _____

FOR SHERIFF.

C_____ D_____, residence _____

FOR PROSECUTING ATTORNEY.

E_____ F_____, residence _____

FOR CLERK OF CIRCUIT COURT.

G_____ H_____, residence _____

FOR CLERK OF COUNTY COURT.

J_____ K_____, residence _____

(And so on to the end of the nominations for all the county officers to be elected.)

In witness whereof we have hereunto set our hands this _____ day of _____, in the year _____.

		L_____ M_____, Chairman,
N_____ O_____, Secretary,		Residence _____
	Residence _____	Post office address _____.
	Post office address _____.	

[Acts 1891, ch. 89; Marcum vs. Ballot Com., 42 W. Va. 263.]

24. Candidates for public office may be nominated otherwise than by convention or primary elections. In such case, a certificate shall be signed by voters resident within the State, district or political division for which the candidate is presented, to a number equal to one per cent. of the en-

tire vote cast at the last preceding election in the State, circuit, district, county or other division for which the nomination is made. Provided, that the number of signatures so required shall not exceed one thousand nor be less than fifty, and need not be all signed on one certificate. No voter signing such certificate shall be counted unless his residence and post office address be designated. Such certificate shall state the name and residence of each of such candidates; that he is legally qualified to hold such office; that the subscribers desire and are legally qualified to vote for such candidates; and may designate, by not more than five words, a brief name of the party or principle which said candidates represent. No person shall join in nominating more than one nominee for each office to be filled, otherwise, his name shall be counted for neither nominee.

Such certificate may be in the following form, or to the following effect, to-wit:

State of West Virginia,

— *County, ss.*

This is to certify that we, the undersigned voters resident within the county of —, State of West Virginia, do hereby make the following nominations for public office for said county, to-wit:

FOR HOUSE OF DELEGATES.

A — B —, Residence — (And so on to the end of the nominations so made, as in the preceding form.)

And we further certify that each of said candidates is legally qualified to hold the office for which he is nominated, and that we desire, and are legally qualified, to vote for said candidates. The name of the party (or principle which said candidates represent is — (here state it.)

Signature,	Residence,	Post Office Address.
(name of voters.)	(describe it.)	(name of office.)

[Acts 1891, ch. 89.]

25. Certificates of nomination of candidates for public office shall be certified and filed with the clerk of the circuit court of each county, as follows: For offices to be filled by the voters of the whole state, by the president and secretary of the nominating convention, when one is held or the full names of the candidates so nominated may be certified by the president and secretary, and published in a newspaper published at the place where the convention is held, or at the seat of government, and a copy thereof may be filed as aforesaid in lieu of the certificate first herein provided for. Certificates of nomination made by voters otherwise than by convention or primary elections, shall be filed by the persons or some of them whose names are signed to the certificate of nomination, and if such nominations are made by a primary election, the certificates thereof shall be made by the chairman and secretary of the executive committee of the party making the same; and they may be certified and published in a newspaper and copies of each paper may be filed as hereinbefore provided for. Certificates of nomination of candidates for representatives in congress, for judges of circuit or other courts of record, and for State senators, shall be certified and filed by the chairman and secretary of the district executive committee of the party making them, whether they be made by a convention or primary election; and the provisions herein

contained in regard to the printing of nominations shall apply to all such nominations. Certificates of nomination of candidates for the house of delegates, and for all county offices, shall be made and filed by the county executive committee of the party making them. Certificates of the nomination of candidates for offices to be filled by the voters of a magisterial district, shall be made and filed by the said magisterial district committee or by the chairman and secretary of the county executive committee. And certificates of nomination for municipal officers shall be made and filed by a committee of the party making the nominations appointed for the purpose, or by the president and secretary of the convention making such nominations. Every such certificate shall be filed with the said clerk, at least twenty days before the day fixed by law for the election of the persons nominated.—[Acts 1891, ch. 89.]

26. State, congressional, judicial, senatorial, district and county executive committees shall be appointed by each political party making nominations of candidates for office, and it shall be the duty of the committees so appointed to do and perform the duties required of them by this chapter.—[Acts 1891, ch. 89.]

27. In case it shall appear to the clerk of the circuit court of any county by satisfactory evidence that nominations have been made in conformity with the provisions of this chapter, and no certificate thereof has been received by him, he shall include such nominations among the names of candidates to be printed upon the ballots as hereinafter provided.—[Acts 1891, ch. 89.]

28. The certificates of nominations so filed in the office of the clerk of the circuit court shall be preserved therein by him until ten days after the next succeeding election, when he may destroy the same.—[Acts 1891, ch. 89.]

Vacancies in Nominations—How Filled.

29. In case of a vacancy in a nomination by death, resignation or otherwise, it may be filled and certified in the same manner as originally made and certified; but if such vacancy be not so filled within twenty days by the voters of the entire State, or within ten days next preceding an election for any other office, if said committee fail or refuse to meet, it shall be lawful for the chairman of the committee of the party, of which said candidate was a member, for the state, circuit, county, district or other political division in which such vacancy occurs to fill such vacancy by nomination, make a certificate thereof and file the same with the same officer with whom the original certificate of nomination was, should, or might have been legally filed; and it shall be the duty of the officer with whom such certificate is filed to receive and proceed with the same, in all respects, as an original nomination.

If such nomination to fill such vacancy be not so made and certified to the clerk of circuit court before the printing of the ballots herein provided for, it shall be lawful for the chairman of said State, circuit, county, district; or other political division committee to provide the commissioners of election of each precinct, in which such candidate is to be voted for, with a number of pasters containing only the name of such candidate, at least equal to the number of ballots provided for each precinct, but no

pasters shall be given to or received by any person except such commissioners of election, and it shall be the duty of the commissioners of election to deliver such pasters to the polling clerks, who shall, in the presence of the said commissioners, put one of such pasters in a careful and proper manner, and in the proper place, on each ballot, before said polling clerks shall sign their names thereon.—[Acts 1871, ch. 89.]

Publication of Nominations.

30. At least ten days before an election to fill any public office, at which the voters of any county are entitled to vote, the clerk of the circuit court of such county shall cause to be published in two newspaper, if such there be published within the county, representing the political parties which at the last preceding general election cast the largest number of votes in the State or if there be only one newspaper published therein, then, in such newspaper, the nominations for office certified to him and filed in his office, excepting nominations for office to be filled by the voters of any sub-division less than a county.

He shall make no less than two publications in each of such newspapers before the election, one of which, in each newspaper, shall be upon the last day upon which such newspaper is issued before the election. If there be no newspaper published in the county, the clerk of the circuit court shall at least ten days before the election, cause to be posted in his office and at some public place in each voting precinct in the county, a printed notice of the nominations for office certified to and filed by him as aforesaid. Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names or description of candidates nominated for public office or in printing of the ballots, the board of ballot commissioners shall correct such error. Provided, That nothing in this chapter contained shall be taken or construed to prohibit or prevent any person from running as an independent candidate for any office to be filled, and to have all legal votes cast at any election for such independent candidate counted, allowed and certified, with like effect as other votes.—[Acts 1891, ch. 89.]

31. The list of nominations published and posted by the clerks of the circuit courts of the respective counties, shall be arranged in the order and form in which they will be printed upon the ballots.—[Acts 1891, ch. 89.]

Board of Ballot Commissioners.

32. In each county of the State, the clerk of the circuit court and two persons by him appointed, one from each of the two political parties which cast the largest number of votes in the State, at the last preceding general election, shall constitute a board of ballot commissioners, of which board the said clerk shall be chairman. It shall be the duty of such chairman to notify the chairman of the prospective county executive committees of said two parties at least five days before making said appointments, of the time and place of making the same, and if at any time after said notice is given, and before or on the day so fixed for making said appointments, the chairman of either of said committees shall designate

in writing, a member of such party as ballot commissioner, having the qualifications of a voter, he shall be appointed.—[Acts 1891, ch. 89.]

Preparation and Distribution of Ballots.

33. Excepting municipal elections, it shall be the duty of the board of ballot commissioners for each county to provide printed ballots for every election for public officers in which the voters or any of the voters within the county participate, and cause to be printed, on the appropriate ballot, the name of every candidate whose name has been certified to or filed with the clerk of the circuit court for the county in the manner provided for in this chapter.

The printing of the ballots, and all other printing caused to be done by the board of ballot commissioners, shall be contracted for with the lowest responsible bidder. Ballots other than those caused to be printed by the respective boards of ballot commissioners according to the provisions of this chapter, shall not be cast, received nor counted in any election.—[Acts 1891, ch. 89; *Marcum vs. Commissioners*, 42 W. Va. 263.]

34. All ballots prepared under the provisions of this chapter shall be printed in black ink on number two white book paper sufficiently thick that the printing cannot be distinguished from the back, and shall contain the names of every candidate whose nomination for any office to be voted for at the election has been certified and filed according to law, and no others.

The tickets, except the heading, which shall be in display type, shall be printed from brevier type; the name or designation of the office and the residence of the candidate in lower case letters, and the name of the candidate in capital letters. The name and residence of the candidate may be printed in the same line. The name of each candidate shall be printed in a space defined by ruled lines, and with a blank square on its left inclosed by heavy dark lines. If, upon any ticket, there be no candidate or candidates for a designated office, a blank space equal to the space that would be occupied by such name or names, if they were printed thereon, with the blank space herein provided for, shall be left. The heading of each party ticket, including the name of the party and the device above and the large circle between the device and such name, shall be separated from the rest of the ticket by a heavy line; and the circle above the name of the party in which the voter is to place the cross mark, if he desires to vote the straight ticket, shall be defined by heavier lines than the lines defining the blank spaces before the names of candidates, and such circle shall be surrounded by the following words printed in heavy face nonpareil type: "For a straight ticket mark within this circle." Each party ticket shall be separated from other party tickets and bordered on either side by a heavy border, or a broad solid line, at least one-eighth of an inch wide, and the edges of the ballot on either side trimmed off up to one-half inch of the borders or solid line described.

The names of the candidates shall be arranged on the ballot in tickets or lists in separate columns under the respective party or political or other designation certified, each column or ticket containing the names of candidates nominated by the same political party and no others. In elections for presidential electors the names of the candidates for presi-

dent and vice-president of the United States shall be placed on the ticket immediately following the name of the party, and preceding the names of the presidential electors, and shall be certified to the clerks of the circuit courts by the chairman and secretary of the state executive committee of the political party making the nomination. The names of the candidates on each ticket shall be arranged in groups, with a heading over each group printed in heavy faced brevier type to indicate the political division in which such group is to be voted for. The arrangement of the ballot shall conform as nearly as practicable to the plan here given:

Device.



Republican Ticket.

Device.



Democratic Ticket.

Device.



Prohibition Ticket.

For Governor,
Name.For Governor,
Name.For Governor,
Name.

The tickets of the several political parties shall be printed on the ballot in parallel columns, each ticket in a separate column headed by the chosen device, and the tickets in such order on the ballot, and the names of the offices in such order on the ticket, as the secretary of state shall direct, preference, however, being given to the political party which cast the highest number of votes for the head of the ticket at the last preceding presidential election, and so on. No ticket or list of candidates shall be printed under the name of any party containing more candidates for any office than are to be elected.

The ballots shall be so printed as to give each voter a clear opportunity to designate by a cross mark in a large blank circular space three-quarters of an inch in diameter below the device and above the name of the party at the head of the ticket or list of candidates, his choice of a party ticket and desire to vote for each and every candidate thereon; and by a cross mark in a blank inclosed space on the left and before the name of each candidate, his choice of particular candidates.

On the back of the ballot shall be printed or stamped in black ink the words "Official Ballot," with the date of the election, and underneath shall be two blank lines, followed by the words "Poll Clerks." On one of these lines each poll clerk shall personally write his name in ink.

The state executive committee of each political party shall adopt a party device or emblem for its party, to be printed at the head of its ticket on the ballot, and shall certify the same to the clerk of the circuit court of each county at least sixty days before any election; and the device shall remain the same until changed and certified as aforesaid. No two parties shall adopt the same device, or so near the same as likely to lead to confusion; and in such case the preference shall be given to the party casting the highest number of votes for the head of the ticket at the last preceding presidential election. When a ticket or person is nominated by petition, the petition shall show the device adopted by the petitioners.

In preparing his ballot the voter shall use a black lead pencil and observe the following rules:

First. If the voter desires to vote a straight ticket, or in other words for each and every candidate of one party for whatever office nominated, he shall either:

(a) Make a cross mark in the circular space below the device and above the name of the party at the head of the ticket; or

(b) Make a cross mark on the left and opposite the names of each and every candidate of such party in the blank space provided therefor; or

(c) Mark out, by lines through all the ticket in the ballot, other than the ticket he desires to vote.

Second. If the voter desires to vote a mixed ticket, or in other words for candidates of different parties, he shall either:

(a) Omit making a cross in the circular space above the name of the party, and make a cross mark in the blank space before the name of each candidate for whom he desires to vote on whatever ticket the name may be; or

(b) Make a cross mark in the circular space above the name of the party for some of whose candidates he desires to vote, and then make a

cross mark before the name of any candidate of any other party for whom he may desire to vote; in which case the cross mark in the circular space above the name of the party will cast his vote for every candidate on the ticket of such party, except for offices for which candidates are marked on other party tickets, and the cross marks before the names of such candidates will cast his vote for them; or,

(c) Write with black lead pencil the name of person for whom he desires to vote, in the space immediately below the names of the opposing candidate for the same office, on the ticket voted by him, and the name so written shall be counted.

If, in marking either a straight or mixed ticket as above defined, a cross mark is made in the circular space above the name of a party at the head of the ticket, and also one or more cross marks made before the name or names of candidates on the same ticket for offices for which candidates on other party tickets are not individually marked, such marks before the names of candidates on the ticket so marked, shall be treated as surplusage and ignored; and the ballot be counted for all the candidates on the ticket thus marked for offices for which no candidate on other tickets are marked.

If the voter desires to vote for any person whose name does not appear on the ticket he can substitute the name by writing it with black lead pencil in the proper place, and making a cross mark in the blank space at the left of the name so written.

If the voter mark more names than there are persons to be elected to an office, or if, for any reason, it is impossible to determine the voter's choice for an office, to be filled, his ballot shall not be counted for such office.

No ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.—[Acts 1908, ch. 21.]

35. If the printer of such ballots, or any person employed in printing the same, shall give or deliver, or knowingly permit to be taken, any of said ballots, by any person other than a member of the board of ballot commissioners, for whom such ballots are being printed, or shall print, or cause, or permit to be printed, any ballot in any other form than the one prescribed by this chapter, or with any other names thereon, or with the names spelled, or the names thereon arranged, in any other way than that authorized and directed by the said board of ballot commissioners, he shall be guilty of felony, and on conviction thereof, shall be imprisoned in the State penitentiary not less than three nor more than ten years.—[Acts 1891, ch. 89.]

36. The board of ballot commissioners shall, for the general election to be held in their county in the year one thousand eight hundred and ninety-two, have printed three ballots for each voter in their county, as shown by the votes cast therein at the election held in one thousand eight hundred and ninety, or one thousand eight hundred and eighty-eight, at whichever of said elections the largest number of votes were cast. And thereafter, they shall have printed a like number of ballots for each vote cast in their county at the last preceding general election held therein. The ballots so printed shall be wrapped and tied in packages, one for each place of voting in their county in the year one thousand eight hundred and ninety-two, containing three ballots for the estimated number of

votes to be cast at each of said places, and thereafter containing three ballots for each vote cast at said place of voting at the last preceding general election held thereat. Each package of ballots shall be sealed with wax, and plainly marked with the number of ballots therein, the name of the magisterial district, and the number of the voting place therein, to which it is intended to be sent. The name of the ballot commissioner shall also be endorsed thereon. On the back of each sheet of paper on which the ballots are printed as aforesaid, and as near the center thereof as may be, shall be printed the words, "poll clerks," and under them each poll clerk shall write his name before the ballot is delivered to the voter. And the sheet containing said ballots shall be so folded as to show the words "poll clerk," and the signatures of said clerks written thereon, before depositing the same in the ballot box.—[Acts 1891, ch. 89; Snodgrass vs. Co. Ct., 44 W. Va. 56; Kirkpatrick vs. Degans, 53 W. Va. 275; Daniel vs. Sims, 49 W. Va. 554.]

37. It shall be the duty of one of the commissioners of election appointed for each place of voting in their county, to be designated by them, in writing, to attend at the office of the clerk of the circuit and county court of his county, not more than four nor less than two days before each election, to receive the ballots for the place of voting at which he is appointed to act, and the said clerk shall deliver to him the sealed package of ballots provided for his precinct by the said board, and take from him a receipt for the same, which shall be filed in the office of the clerk of the circuit court; and the clerk of the county court, if he has not already done so, shall deliver to him one of the ballot boxes and other things mentioned in section nine of this chapter, and take from him a receipt for the same, which shall be filed in his office. The ballot box shall be returned by said commissioner, after the election, to the clerk of the county court and preserved in his office.—[Acts 1891, ch. 89.]

38. If any member of the board of ballot commissioners shall give or deliver to any other person any of said ballots or shall knowingly permit any of them to be taken away, except as herein provided, he, or they, shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment in the penitentiary for not less than one nor more than five years.—[Acts 1891, ch. 89.]

39. Any person who shall unlawfully take or remove, with or without the consent of the lawful custodian thereof, any such ballot from the place at which said ballots are lawfully kept for the time being, every such person shall be guilty of a felony and upon conviction thereof be confined in the penitentiary not less than one nor more than five years.—[Acts 1891, ch. 89.]

40. In case any commissioner of election shall fail to appear at the office of the clerk of the circuit and county court of his county by the close of the second day prior to any election, as required by section thirty-seven of this chapter, the board of ballot commissioners or the chairman thereof shall forthwith dispatch a special messenger to his precinct with the ballots for such precinct. Such messenger shall be allowed two dollars for his time and five cents per mile for the distance necessarily traveled by him, and shall promptly report to the clerk of the circuit court and file with him the receipt of the person to whom he delivered

such ballots, and his affidavit, stating when and to whom he delivered such ballots; and the commissioners of election so failing shall receive no compensation for his services at such election.—[Acts 1891, ch. 89.]

41. Any commissioner of election who shall wilfully or negligently fail to appear at the office of the clerk of the circuit or county courts of his county, as herein provided, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than ten dollars, nor more than one hundred dollars, and shall thereafter be incompetent to serve as a member of such board.—[Acts 1891, ch. 89.]

42. If by any accident or casualty, the ballots or ballot box delivered to a commissioner of election, or to any messenger, shall be lost or destroyed, it shall be the duty of such commissioner or messenger to report the loss forthwith to the board of ballot commissioners, and clerk of the county court from whom the same were or was obtained, and make affidavit of the circumstances of the loss; whereupon such board and clerk shall at once send a new supply by special messenger, as provided in other cases. In case, for any reason there should be found no ballots, or ballot box, or other necessary means or contrivances for voting, at the opening of the polls, it shall be the duty of the commissioners of election to secure the same as speedily as possible, and, if necessary, such board may have ballots printed or written, or a ballot box made; provided, however, that such ballots shall conform as nearly as possible to the genuine ballots, and the printing or writing, and the care of the same, and of said ballot box, shall be under the same provisions and penalties as the printing and care of the other ballots, and other ballot boxes, prescribed in this act.—[Acts 1891, ch. 89.]

43. The various boards of ballot commissioners, or the chairman thereof, shall preserve the ballots that are left over in their hands, after supplying the precincts as hereinbefore provided, until the close of the polls on the day of election, and said ballots shall then be destroyed by said board or the chairman thereof by fire or otherwise; and for failure to do so, the said commissioner or chairman shall be guilty of a misdemeanor, and fined not less than fifty nor more than one hundred dollars.—[Acts 1891, ch. 89.]

Card of Instruction to Voters.

44. The board of ballot commissioners of each county shall cause to be printed in large, clear type, on cards, instruction for the guidance of electors in preparing their ballots. They shall furnish twelve of such cards to the commissioners of election at the same time they deliver to him the ballots for his precinct. The commissioners shall cause to be posted one of said cards in each place or compartment provided for the preparation of the ballots, and the others in and about the polling place, and one or more of the cards outside of the sixty-foot line provided for in this chapter, upon the day of election. Said cards shall contain full instructions to the voters as to what shall be done: (1) to obtain ballots for voting; (2) to prepare the ballots for deposit in the ballot boxes; (3) to obtain a new ballot in place of one accidentally spoiled; also, a copy of sections fifty, sixty-two, seventy-six, seventy-nine, eighty-one and eighty-two of this act. Said ballot commissioners shall also cause to be

printed on colored paper ten or more copies of the ballots provided for each voting place at each election therein, which shall be called specimen ballots, and shall be furnished and posted with the cards of instruction for each voting place, and marked so as to indicate the manner of marking those not voted.—[Acts 1891, ch. 89.]

Election Rooms, Shelves or Tables and Compartments.

45. The county court in each county, before each election, shall secure, in each voting precinct in the county, a suitable room or building in which to hold the election, and shall cause the same to be suitably provided with a sufficient number of booths or compartments, each containing a table, counter or shelf, and furnished with proper supplies for preparing the ballots, at or in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secured from the observation of others, and a guard rail shall be so constructed and placed about said building that only such persons as are inside said rail can approach within five feet of the ballot boxes while the votes are being taken, and no person either inside or outside of said guard rail shall approach nearer than five feet to any booth or compartment while the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation of his ballot. The number of such booths or compartments shall not be less than two nor more than five, and no person other than election officers and voters engaged in receiving, preparing or depositing their ballots, shall be permitted to be within said rail, except by authority of the commissioners of election for the purpose of keeping order and enforcing the law.—[Acts 1891, ch. 89.]

Prevention of Disorder at the Polls.

46. The judges of election shall preserve order at, and in the vicinity of the polls, and keep the way to the polls open and free from obstruction, and may direct disorderly persons to be removed therefrom, and, if necessary and proper, to be taken and held in custody until sunrise of the next day, or for any shorter time, which may be done by any sheriff or constable or other person or persons designated by the commissioners of election, and for such purpose no warrant nor authority in writing shall be necessary; and the jail of the county or other place, designated by the commissioners of election, may be used as the place of custody; but any person so arrested shall have an opportunity to vote, if he be entitled to do so, before he shall be committed to jail, if he so desire, and shall be prepared to do so promptly,—[Const. 1863, Art. III, Sec. 12; Acts 1863, p. 118; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

47. Any person offending against the provisions of the next preceding section shall, notwithstanding his having been in custody, as aforesaid, be liable to any penalty or punishment for his offense, prescribed by law; and any person who, being thereto commanded by the commissioners of election, or either of them, either verbally or in writing shall fail or refuse to assist to the utmost of his power, in whatever may be necessary or proper to prevent intimidation, disorder or violence at the polls, shall forfeit not less than one hundred nor more than five hundred dol-

lars.—[Const. 1863, Art. III, Sec. 12; Acts 1863, p. 118; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

Challengers.

48. The county executive committees, or the chairman thereof, of the two political parties which cast the largest number of votes in the State at the last preceding general election, may appoint a challenger, who must be a qualified voter in the election precinct for which he is appointed, and who shall be entitled to remain in the election room from the opening of the polls until the counting, ascertainment and declaration of the result. If such appointment be not so made, or being made said challenger be not present at the opening of the polls, the voters present, of said parties, respectively, may make such appointment.

Every challenger so appointed as aforesaid, shall before entering upon the discharge of his duties take and subscribe an oath to the following effect:

State of West Virginia,

————— *County, ss.*

I, A————, B————, do solemnly swear that I will faithfully and honestly discharge my duties as challenger of the election now about to be held in precinct No. ——— in the ——— district of ——— County of ———, State of West Virginia, and that I will not disclose nor communicate to any person how any elector voted nor how any ballot was folded, marked, printed or stamped.

Subscribed and sworn to before me, this ——— day of ———.
—[Acts 1895, ch. 3.]

49. If any person offering to vote shall be challenged by one of such challengers, or by any commissioner of election, he shall stand aside and not be entitled to vote, unless he makes affidavit in writing before one of the commissioners of election that he is a qualified and legal voter of the precinct, and in such affidavit, sets forth his name, age, residence, occupation, place or places of residence during the twelve months next prior to the election, with the date of any removal within that time, and the names of two persons, who have personal knowledge of his residence within the county sixty days next preceding the election. Forms of affidavits to be used in such cases shall be prepared and printed under the direction of the board of ballot commissioners and distributed to the several places of voting at the same time the ballots, poll books, etc., are sent to said places.—[Acts 1891, ch. 89; *United States vs. Small* (C. C.) 38 Fed. 105; *Brazie vs. Commissioner*, 25 W. Va. 213.]

Persons Accused of Illegal Voting.

50. If at any time during the election any qualified voter shall make affidavit before a commissioner of election, that any person who has voted is an illegal voter in such precinct, the person accused shall at once be arrested by any constable or other person designated by the election commissioners to make the arrest, and by him delivered to the civil authorities. Any person desiring to make such affidavit shall be admitted to the election room for that purpose. Immediately after the close of the election, the commissioners of election shall deliver such

affidavit to some justice of the peace in the magisterial district, who shall proceed thereon as if the affidavit had been made before him.—[Acts 1891, ch. 89.]

51. Whoever shall knowingly, or wilfully, make false affidavit, under any of the provisions of this chapter, shall be deemed guilty of perjury, and on conviction thereof shall be confined in the penitentiary not less than one nor more than three years.—[Acts 1891, ch. 89.]

Time Must be Allowed Employees to Vote.

52. Every person entitled to vote at any general, national, state or county election, who may be employed by another on the day on which such election shall be held in this State, shall be given some period of four hours, or more if necessary, between the opening and the closing of the polls, on said day, for the purpose of enabling such person to repair to his place of voting to cast his vote and return; and any circuit court, or the judge thereof in vacation, may enforce the provisions of this section by mandate, or otherwise, upon the application of any voter. Every officer of any corporation, owner, superintendent, overseer, foreman or other person, who employs or permits to be employed any person against his will, in violation of this section, shall be guilty of a misdemeanor and fined not less than fifty, nor more than five hundred dollars.—[Acts 1891, ch. 89.]

Conducting the Election.

53. Not more than one voter for each compartment mentioned in section forty-five of this chapter shall be allowed in the election room at one time, and no person other than election officers, challengers and voters engaged in receiving, preparing and depositing their ballots, shall be permitted to be within the rail except by authority of the board of election judges, for the purpose of keeping order and enforcing the law.—[Acts 1891, ch. 89.]

54. No person, excepting the election officers, challengers and voters while going to the election room to vote and returning therefrom, shall be or remain within sixty feet of said room; but this section shall not apply to persons living or carrying on business within that distance of the election room, in the discharge of their legitimate business, or to persons whose business requires them to pass and repass within sixty feet of such room.—[Acts 1891, ch. 89.]

55. At or before the opening of the polls, the commissioners of election shall open the package of ballots in such a manner as to preserve the seals intact, and then deliver all of the ballots to the poll clerks.—[Acts 1891, ch. 89.]

56. On any day of election of public officers in any election precinct, each qualified voter shall be entitled to receive from the poll clerk one ballot. On entering the election room the voter shall give his name and residence to one of the poll clerks, who shall thereupon announce the same in a loud and distinct tone of voice. The poll clerk shall then deliver to him one, and only one, ballot, except as herein otherwise provided.—[Acts 1891, ch. 89.]

57. On receipt of the ballot, the voter shall forthwith, and without

leaving the enclosed space, retire alone to one of the booths or compartments provided for the purpose, and shall prepare his ballot, as provided in section thirty-four of this chapter. After preparing his ballot, the voter shall fold the same so that the face thereof shall not be exposed, and so that the names of the poll clerks thereon shall be seen, unless he elect to vote openly. When the voter shall prepare his ballot he shall then vote forthwith, and before leaving the polling place. He shall give his name and present his ballot to one of the commissioners of election, who shall proclaim in a loud and distinct tone, the name of the person offering to vote, and hand the ballot to another of said commissioners of election of a different political party than his own, and if a majority of said board are satisfied that the ballot is single, and that the person is entitled to a vote at the said election, one of the said commissioners of election shall deposit the ballot in the ballot box, and the poll clerks shall enter the name of the voter on the poll-books numbering the voters in the order in which they vote. The commissioners of election may inspect every ballot, before it is deposited in the ballot box, to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its contents. When the voter has voted, he shall retire immediately from the election room and beyond the sixty feet limit thereof.—[Acts 1891, ch. 89.]

58. Not more than one person shall be permitted to occupy any booth or compartment at one time; and no person shall remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot, and in no event longer than five minutes. No voter, or person offering to vote, shall hold any conversation or communication with any other person than the poll clerks or commissioners of election, while in the election room.—[Acts 1891, ch. 89.]

59. Any voter who shall spoil, deface or mutilate the ballot delivered to him, may, on returning the same to the poll clerks, receive another in place thereof. Every person who does not vote any ballot delivered to him, shall before leaving the election room return such ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the poll list, at the time, and such ballot shall then be destroyed by them in the presence of the commissioners of election.—[Acts 1891, ch. 89.]

60. Any voter who declares or indicates to the poll clerks that he cannot read or write, or that by reason of physical disability he is unable to prepare his ballot, may declare his choice of candidates to the poll clerks, who in the presence of the voter and in the presence of each other, shall prepare his ballot for voting in the manner hereinafter provided, and on request, shall read over to such voter the names of the candidates on the ballot as so prepared; or such voter may require the poll clerks to indicate to him the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments, to prepare his ballot in the manner hereinbefore provided. Any poll clerk who shall deceive any voter in selecting or preparing any ballot, or prepare the same in any other way than as requested by said voter, shall be guilty of a felony, and on conviction

thereof, shall be imprisoned in the penitentiary for not less than two nor more than five years.—[Acts 1891, ch. 89.]

61. No commissioner of election shall deposit in the ballot box any ballot upon which the names of the poll clerks as hereinbefore provided for, do not appear.—[Acts 1891, ch. 89.]

62. Any person who shall remove or attempt to remove a ballot from the election room, or having in his possession outside the election room any ballot, either genuine or counterfeit, during the election, shall be guilty of felony, and on conviction thereof, shall be imprisoned in the penitentiary not less than two nor more than five years.—[Acts 1891, ch. 89.]

Ascertaining the Result at the Several Election Precincts.

63. When the polls are closed the commissioners of election and poll clerks shall proceed to ascertain the result of the election in the manner hereafter specified, and shall not adjourn nor delay, until the votes are all counted, the result ascertained, the memorandum made, and copies thereof delivered and posted as hereinafter required.—Acts 1863, p. 120; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

64. Immediately on closing the polls, the commissioners of election shall count all the ballots remaining not voted, record the number of the same on the tally sheets, and destroy all such ballots, by immediately consuming them by fire or otherwise.—[Acts 1891, ch. 89; *Loomis vs. Jackson*, 6 W. Va. 613.]

65. The names entered on the poll books shall then be counted by the commissioners and clerks, and the number thereof be set down in words at length and also in figures, at the foot of the lists, which shall then be signed by the commissioners and clerks; and the ballot box shall then be opened, and one of the commissioners taking therefrom one ballot at a time, in the presence of all the other officers, shall read therefrom the designations of the offices to be filled, and the names of the persons voted for, for each office, and hand the ballot to another of said commissioners, differing in politics from himself, who if satisfied that it was correctly read shall string it on a thread. The contents of the ballots, as they are read, shall be entered by the poll clerks, under the supervision of the commissioners, on tally papers for the purpose, by suitable marks in ink, made opposite to or under the name of each person voted for, so as to show the number of votes received by every person, for any office to be filled. The ballots shall be counted as they are strung upon the thread, and whenever the number counted shall be equal to the number of votes entered upon the poll books, the excess, if any, remaining in the ballot box shall immediately be destroyed by fire or otherwise, without unfolding or unrolling the same, or allowing any one to examine or know the contents thereof.—[Acts 1863, p. 120; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

66. If two or more ballots be found folded or rolled together and the names thereon be the same, one of them only shall be counted, but if the names thereon be different, in any particular, neither of them shall be counted except as hereinbefore provided, and, in either case the commissioners of election shall, in writing, in ink, place a common number on

said ballots and state thereon that they were folded or rolled together when voted. If any ballot be found to contain more than the proper number of names for any office, such ballot shall not be counted as to such office. In any election for senator, if a person be voted for on any ballot who is not a resident of the proper county, as required by the fourth section of the sixth article of the constitution, such ballot shall not be counted for said office. Any ballot which is not endorsed with the names of the poll clerks, as provided in this chapter, shall be void and shall not be counted; and any ballot, or part of a ballot, from which it is impossible to determine the elector's choice of candidates, shall not be counted as to the candidate or candidates affected thereby. On completing the count and recording the same on tally sheets, the commissioners of election shall immediately make a memorandum of the total vote cast for each candidate, deliver a copy thereof to each member of such board, and post a copy thereof on the front door of the polling room, and transmit a copy thereof to the clerk of the county court, who shall post the same in his office for public inspection.—[Acts 1863, p. 120; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; 1893, ch. 25, *Dunlevy vs. County Court*, 47 W. Va. 513.]

Precinct Returns of Election Results.

67. As soon as the results are ascertained, the commissioners of election, or a majority of them, at each place of voting, shall make out and sign two certificates thereof, in the following form or to the following effect: "We, the undersigned, who acted as commissioners of the election held at precinct No. —, in the district of —, and county of —, on the — day of —, do certify that, having been first duly sworn, we have fairly and impartially held the said election according to law, and the result thereof is as follows: For the office of — (here designate the office, as for example, 'delegate for the county of Barbour,' or 'Senator for the first senatorial district,' 'Judge for the first circuit,' 'Representative in the congress of the United States for the first congressional district,' 'Governor of the state,' 'Judge of the supreme court of appeals,' 'Justice of the peace of said district,' and so forth as the case may be.) A. B. received — votes, C. D. — votes, and E. F. — votes, and so on throughout, stating according to the truth, the full name of every person voted for, for every office, and in words at length, and also in figures, the number of votes he received for same; and concluding as follows: Given under our hands this — day of —." The said two certificates shall contain complete returns of the polls, taken at the said place of voting for every office to be filled. When the said certificates are signed, the ballots shall be enclosed by the commissioners in an envelope, which they shall seal up, and write their names in ink across the place or places where it is sealed, and endorse in ink on the outside of the said envelope as follows: "Ballots of the election held at precinct No. —, in the district of —, and county of —, the — day of —." One of the commissioners of the election shall, within three days (excluding Sunday), after the day on which the election was held, deliver the ballots so sealed up, one set of the poll-books and tally-sheets, and one of said certificates to the clerk of the county court, and the other

certificate, and set of poll-books and tally-sheets to the clerk of the circuit court, all of which shall be preserved in the respective offices of said clerks.—[Acts 1863, p. 120; 1864, p. 9; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; *Brazie vs. Com.*, 25 W. Va., 213; *Dial vs. Hollandsworth*, 39 W. Va. 1; 13 Fla. 55; 2 Me., 180; 10 Mo., 630; 4 Wis., 749; 10 Iowa, 343; 39 Ind., 488; *Dent vs. Board*, 45 W. Va. 750.]

Canvassing Board.

68. The commissioners of the county court shall be ex-officio a board of canvassers, and as such, shall keep in a well-bound book, marked: "election record," a complete record of all their proceedings in ascertaining and declaring the result of every election in their respective counties. They shall convene as such canvassing board at the courthouse on the fifth day (Sundays excepted), after every election held in their county or in any district thereof, and the officer in whose custody the ballots, poll-books, tally-sheets and certificates have been placed shall lay the same before them for examination. They may, if deemed necessary, require the attendance of any of the commissioners, poll clerks or other persons present at the election, to appear and testify respecting the same, and make such other orders as shall seem proper, to procure correct returns and ascertain the true result of the said election in their county; but in such case all of the questions to the witnesses and all the answers thereto, and evidence, shall be taken down in full and spread upon the record. All orders made shall also be entered upon the record. They may adjourn from time to time, but no longer than absolutely necessary, and when a majority of the commissioners are not present, their meeting shall stand adjourned till the next day, and so on from day to day, till a quorum be present. The board, before proceeding to canvass the returns of the election, shall open each sealed package of ballots so laid before them, and without unfolding them, count the number in each package and enter the same upon their said record. The ballots shall then be again sealed up carefully in a new envelope, and each member of the board shall write his name across the place where said envelope is sealed. After canvassing the returns of the election, the board shall, upon the demand of any candidate voted for at such election, open and examine any one or more of the sealed packages of ballots, and recount the same; but in such case they shall seal the same again, along with the envelope above named, and the clerk of the county court, and each member of the board, shall write his name across the place or places where it is sealed, and endorse in ink, on the outside: "Ballots of the election held at precinct No. —, in the district of —, and county of —, on the — day of —."

When they have made their certificates and declared the result, as hereinafter provided, they shall deposit the sealed packages of ballots, poll-books, tally-sheets, and precinct certificates, with the clerks of the county and circuit courts, from whom they were received, who shall carefully preserve the same for one year, and if there be no contest pending as to any such election, said ballots, poll-books, tally-sheets and certificates, shall be destroyed by fire or otherwise, without opening the sealed packages of ballots; and if there be such contest pending, then

they shall be destroyed as soon as said contest is ended. If the result of election is not changed by such recount, the cost and expenses thereof shall be paid by the party at whose instance the same was made.—[Acts 1863, p. 122; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; 4 W. Va. 371; Loomis vs. Jackson, 6 W. Va. 613 and Harrison vs. Leirs, 6 W. Va. 713; Brazie vs. Com., 25 W. Va. 213; Fleming vs. Com., 31 W. Va. 608; Chenoweth vs. Com., 26 W. Va. 230; Alderson vs. Com., 31 W. Va. 633; 32 W. Va. 454; Fleming vs. Com., 32 W. Va. 637; Dunlevy vs. County Court, 47 W. Va. 513; Hebb vs. Cayton, 45 W. Va. 578; Payne vs. Staunton, 55 W. Va. 201.]

69. When an election is held in the county or district for any of the following offices, that is to say: For governor, auditor, treasurer, state superintendent of free schools, attorney general, judge of the supreme court of appeals, judge of the circuit court, senator, delegate, clerk of the circuit court, clerk of the county court, commissioner of the county court, prosecuting attorney, sheriff, surveyor of lands, assessor, justice of the peace, constable, or other office within the county, representative in the congress of the United States or electors of president and vice-president of the United States, the board of canvassers of the county, or a majority of them, under the regulations prescribed in the next preceding section, shall carefully and impartially ascertain the result of the election in their county and in each district thereof, and shall record the same in the following form, or to the following effect: "The board of canvassers of the county of ———, having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the ——— day of ———, do hereby certify that in said county for the office of —, A—— B—— received — votes, C—— D—— received — votes, and E—— F—— received — votes." "And we further certify that at said election held in the district of —, in said county, for the office of —, G—— H—— received — votes, and I—— J—— received — votes." (And so on to each particular office.) In the said certificates shall be set forth, according to the truth, the full name of every person voted for, and in words at length, the number of votes he received for any office. When the certificates are all entered, the record shall be signed by the board or a majority of them. The said board shall sign separate certificates of the result of the election within the county, for each of the offices to be filled.—[Const. 1863, Art. VII, Sec. 4; Acts 1863, pp. 122, 123; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; 25 W. Va., 213 and 26 W. Va. 230; see note to Sec. 68; Hebb vs. Cayton, 45 W. Va. 578; Dent vs. Board, 45 W. Va. 750.]

Certificates; to Whom Sent; How Disposed of; Proceedings Thereon.

70. The separate certificates of the board of canvassers, made pursuant to the preceding section, shall be by them disposed of as follows: Of the certificates respecting the election for delegate or delegates, they shall transmit one to each person voted for as delegate and shall transmit one to the secretary of state, who shall submit the same to the house on the first day of the ensuing regular session, together with a list of persons appearing thereby to be elected. Of the certificates respecting the election of senator, they shall transmit one to each person

voted for as senator, and shall transmit one to the secretary of state, to be submitted by him to the senate, on the first day of the ensuing regular session, together with a list of persons appearing thereby to be elected. Of the certificates respecting the election of the governor, auditor, treasurer, state superintendent of free schools and attorney general, one as to each of said offices, shall be sealed up and transmitted by said commissioners to the secretary of state endorsed on the envelope as follows: "Return of the election for governor, auditor, treasurer, state superintendent of free schools and attorney general." The secretary of state shall deliver the same, unopened, to the speaker of the house of delegates, on the first day of the next session of the legislature; and the speaker shall, immediately after the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of each house of the legislature, which bodies shall, for that purpose, assemble in the hall of the house of delegates. The person having the highest number of votes for either of said offices, shall be declared duly elected thereto; but if two or more persons have an equal and the highest number of votes for the same office, the legislature shall, by a joint vote of the two houses, choose one of the said persons for said office; and one of each said last mentioned certificates, shall also be transmitted under seal, to the governor, who shall immediately tabulate the vote in all the counties, for each office, and cause the same to be published in some newspaper published at the seat of government. Of the certificates respecting the election for judge of the supreme court of appeals, judge of a judicial circuit, representative in the congress of the United States, and electors of president and vice-president of the United States, respectively, the commissioners shall transmit one in each case to the person voted for, and one to the governor; and the governor shall ascertain who are elected, and make proclamation thereof.

Of the certificates respecting the election of all county and district officers, one shall be transmitted to each person for whom votes were cast.—[Acts 1863, p. 124; 1872-3, ch. 118; 1882, ch. 155. See *Alderson vs. Com.* 32 W. Va. 640 for discussion of the question as to whether a court of equity has jurisdiction to enjoin the certification of an election. See also 2 High Inj. sec. 1312; High Extra Rem. sec. 619; 77 Va. 347; 17 Ohio State 271; 1 Brewst. 67; 61 Ill., 201; 55 Ala. 320; 78 Ill. 261.]

71. When the governor is, or the board of canvassers of a county are, to declare the result of an election and it appears to him or them that two or more of the persons voted for have received the highest and an equal number of votes so that the election to the office is not decided by the returns, he, or they, being required to declare the result, shall decide the tie by the election of one of said persons.—[Acts 1863, p. 128; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; *Chenoweth vs. Commissioners* 26 W. Va. 232.]

Declaring the Result of the Election for County and District Officers in Case of Contested Election.

72. In all cases of contested election the county court shall be the judge of election, qualifications and returns of their own members, and of all county and district officers.—Const. 1863, Art. VII, Sec. 4; 1863, p.

122; Const. 1872, Art. VIII, Sec. 24; Acts 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; 2 W. Va. 422; 4 W. Va. 300; Swinburn vs. Smith, 15 W. Va. 483; See Fowler vs. Thompson, 22 W. Va. 106, and Brazie vs. Com., 25 Va., 213.]

73. Though illegal votes be received or legal votes be rejected, at any place of voting, the returns of the votes taken at such place shall not be set aside for that cause, but it may be shown by proper evidence before the tribunal authorized by law to hear and determine contested elections, for whom such illegal votes or any of them were cast, or for whom the legal votes which were rejected would have been given and so far only as is so shown the returns shall be corrected.—[Acts 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; 4 W. Va. 371; 25 W. Va. 213; Brazie vs. Commissioners, 25 W. Va., 223.]

Additional Offences and Penalties.

74. Any officer or person who shall offend in any of the following particulars:

FIRST. Any commissioner of election or poll clerk who shall knowingly make or cause to be made, or conspire with others to make, a false return of the result of the votes cast for any candidates at a precinct election held pursuant to law; or,

SECOND. Any commissioner of election receiving the ballot of a voter to be deposited in the ballot-box at any precinct election, who shall put another ballot in the box instead of the one so received by him; or,

THIRD. Any commissioner of election or poll clerk who shall count and string a ballot not taken from the ballot box, in lieu of one taken or which should have been taken, from such ballot-box; or,

FOURTH. Any commissioner of a county court, whether acting as such or ex-officio as a member of a board of canvassers or otherwise, clerk of a county court, or other person, who shall abstract from any package of ballots voted, sealed and returned from any precinct election either before or after they are filed with the clerk of the circuit or county court, or who shall in any manner change any such ballot from what it was when voted by the voter, or who shall put another ballot in such package in the place of one so abstracted therefrom; or,

FIFTH. Any commissioner of a county court, whether acting as such commissioners or ex-officio as a member of a board of canvassers or otherwise, who shall knowingly make and enter of record, or in any way aid, counsel or advise the same to be done or permit the same to be done without objection on his part, any false or fraudulent statement of the result of any election held within their county; or,

SIXTH. Any person who shall aid, assist, counsel or advise in the commission of any of the offenses above specified; every such officer or person so offending shall be guilty of felony, and upon conviction thereof shall be confined in the penitentiary not less than five nor more than ten years, and at the discretion of the court, he may in addition thereto, be fined not less than five hundred nor more than five thousand dollars. And any person who shall falsely make or fraudulently deface or fraudulently destroy, any certificate of nomination or any part thereof; or file any certificate of nomination, knowing the same or any part thereof,

to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof; or forge or falsely make the official endorsement of any ballot, or print or cause to be printed, any imitation ballot, or circulate the same, or erase, deface, or change in any manner, any election record, or any ballot, poll book, tally sheet or certificate of election deposited with either of the clerks of the county or circuit courts; or conspire with another to do any of said acts, or induce or attempt to induce, any other person to do any of said acts, whether or not said acts, or any of them, be committed or attempted to be committed, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than two nor more than five years.—[Acts 1891, ch. 89. For other offences see Betting on Election, 34 W. Va. 78-83; Treating Voters, 35 W. Va. 320.]

75. Any clerk, member of the board of ballot commissioners, commissioner of election, or other messenger entrusted with the custody of the ballots, who shall open any of the packages in which the ballots are contained, or permit any of them to be opened, or destroy any of such ballots, or permit them to be destroyed, or give, or deliver any such packages or ballots to any person not lawfully entitled to receive them, as herein provided; or conspire to procure, or in any way aid, abet, or connive at any robbery, loss or unlawful destruction of any such ballots or packages shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment in the penitentiary for not less than three nor more than ten years.—[Acts 1891, ch. 89.]

76. If any person shall induce, or attempt to induce, any voter to write, paste, or otherwise place on his ballot, the name of any person, or any sign or device of any kind, as a distinguishing mark by which to indicate to any other person how such voter voted, or shall enter into or attempt to form any agreement or conspiracy with any other person to induce or attempt to induce a voter to so place a distinguishing name or mark on his ballot, whether or not said act be committed or attempted to be committed, such person so offending shall be guilty of a felony, and on conviction thereof, be imprisoned in the penitentiary not less than two years nor more than five years, or he may, at the discretion of the court, be fined not less than one hundred nor more than five hundred dollars, and be imprisoned in the county jail not less than one month nor more than six months.—[Acts 1891, ch. 89.]

77. If any commissioner of election, or a poll clerk, shall reveal to any person how any voter has voted, or what other candidates were voted for on any ballot bearing a name not printed thereon, by the board of ballot commissioners, or give any information concerning the appearance of any ballot voted, such persons so offending shall be guilty of a felony, and, on conviction thereof, shall be imprisoned in the penitentiary not less than two nor more than five years.—[Acts 1891, ch. 89.]

78. If any person shall induce, or attempt to induce, by the use of any unlawful means, any commissioner of election or poll clerk to violate any of the provisions of this chapter, whether or not such commissioner of election or poll clerk, shall violate or attempt to violate any of the provisions thereof, such person so offending shall be guilty of a felony, and,

on conviction thereof, shall be imprisoned in the penitentiary not less than two nor more than five years.—[Acts 1891, ch. 89.]

79. No officer of election shall disclose to any person the name of any candidate for whom a voter has voted. No officer of election shall do any electioneering on election day. No person whatever shall do any electioneering on election day within any polling place, or within sixty feet of any polling place. No person shall apply for or receive any ballot in any polling place, other than that which he is entitled to vote, nor shall any person examine a ballot which any voter has prepared for voting or solicit the voter to receive the same, nor ask, or make any arrangements, directly or indirectly, with any voter to vote an open ballot. No person except a commissioner of election shall receive from any voter a ballot prepared by him for voting. No voter shall receive a ballot from any person other than one from the poll clerks; nor shall any person other than a poll clerk deliver a ballot to a commissioner of election, to be voted by such commissioner. No voter shall deliver any ballot to a commissioner of election to be voted, except the one he receives from the poll clerk. No voter shall place any mark upon his ballot, nor suffer or permit any other person to do so, by which it may be afterward identified as the ballot voted by him. Whoever shall violate any provision of this section shall be deemed guilty of a felony and on conviction thereof shall be punished by imprisonment in the penitentiary for not less than one nor more than two years.—[Acts 1891, ch 89.]

80. Any public officer, upon whom any duty is imposed by this chapter, who shall wilfully neglect or refuse, or omit to perform such duty, or do any act prohibited herein, for which punishment is not otherwise provided, shall be deemed guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than three years.—[Acts 1891, ch. 89.]

81. If any person not herein authorized so to do, shall enter or attempt to enter the election room, or shall remain within sixty feet of the polling place, contrary to the provisions hereinbefore made, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, and confined in the county jail not less than thirty days.—[Acts 1891, ch. 89.]

82. If any person shall, during the election, remove or destroy any of the supplies or other conveniences placed in the booths or compartments as aforesaid, or deliver to the voter for the purpose of enabling the voter to prepare his ballot, or shall, during an election, remove, tear down or deface the cards printed for the instruction of the voters, or shall, during an election, destroy or remove any booths, railing or other conveniences, provided for such election, or shall induce or attempt to induce any person to commit any of such acts whether or not any of such acts be committed, or attempted to be committed, shall be guilty of misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail for not less than six months nor more than one year.—[Acts 1891, ch. 89.]

Affidavit Taken During Election.

83. All affidavits provided for in this chapter, to be used on the day of

election at the several polling places, shall, unless herein otherwise directed, at the close of the count, be placed in a strong and durable envelope, by the commissioners of election, and securely sealed by them, and each of them shall endorse his name on the back of such envelope, which shall, within three days after the election, be delivered by one of the commissioners of election, to the clerk of the circuit court of the county, whose duty it shall be to carefully preserve the same and deliver it, with the seal unbroken, to the foreman of the grand jury when next in session. It shall be the duty of such grand jury to enquire into the truth or falsity of such affidavits.—[Acts 1891, ch. 89.]

84. When any county or magisterial district holds an election at any time other than the time of a general election, such election shall if nominations of candidates shall be made and certificates filed as herein provided for, be held in conformity with the provisions of this chapter, and all county and local officers who are required to perform any duties in connection with the general election shall perform the duties in connection with such special or local election, subject to the same provisions and penalties herein prescribed in case of general elections.—[Acts 1891, ch. 89.]

Municipal Elections.

85. Every municipal election shall be held in conformity with the provisions of this act, except that the duties herein required of the county and circuit court clerks shall be performed by the municipal clerk (or recorder, as the case may be); the duties herein required of the commissioners of the county court shall be performed by the municipal council; the duties herein required of the county sheriff shall be performed by the municipal marshal, sergeant (or chief of police, as the case may be); and the rights of designation of election officers by political parties shall be exercised by the chairman of committees of such parties in the municipality, if such there be. Municipal officers are hereby required to perform the various duties herein prescribed for county officers in whose stead they act, subject to the same provisions and penalties herein prescribed as to such county officers, except in any municipality giving at the last preceding election therein less than six hundred votes, in which an election is held for municipal officers without any nominations of candidates having been made and certified, as herein provided, by at least two political parties or organizations of citizens representing a political principle, said election may be held and conducted under the laws in force in this State on the day before this chapter as amended by chapter twenty-five of the acts of 1893, took effect, and shall be counted and certified and the result declared under the provisions of this chapter.—[Acts 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89; 1893, ch. 25; 1895, ch. 29; Knight vs. Town of West Union, 45 W. Va. 194. In this case is discussed the manner of conducting municipal elections in respect to vote on issue of bonds.]

Compensation of Election Officers.

86. Every commissioner of election, poll clerk and ballot commissioner, shall be allowed one dollar and fifty cents each day he shall serve as such, and two dollars in addition thereto as messenger for the ballots, ballot

boxes, poll books and tally sheets. The ballot commissioners shall not receive an allowance for more than two days.—[Acts 1863, p. 128; 1864, p. 9; 1872-3, ch. 118; 1882, ch. 155; 1891, ch. 89.]

Election Expenses a County and Municipal Charge.

87. The printing of ballots and all other expenses incurred in providing for, holding and making returns of elections, shall be a county charge and shall be audited by the county court and paid out of the county treasury, except where the officers to be voted for are, exclusively, municipal officers, in which case such expense shall be a municipal charge, the payment of which shall be provided for in the same manner as other municipal expenses.—[Acts 1891, ch. 89.]

Election Days Legal Holidays.

88. All election days shall be legal holidays throughout the district or municipality in which the election is held.—[Acts 1891, ch. 89.]

Mandamus to Compel Performance of Duty.

89. Any officer or person upon whom any duty is devolved by this chapter, may be compelled to perform the same by writ of mandamus. The circuit courts or the judges thereof in vacation, shall have jurisdiction by such writ, and shall, upon affidavit filed, showing a proper case without a rule to show cause, issue such writ to be returned, heard and determined without unnecessary delay. If a circuit court, or a judge thereof in vacation, shall proceed against any board of canvassers by mandamus, or otherwise, to control, in any manner, the action of said board in the performance of its duty, under the provisions of section sixty-eight of this chapter, in any case concerning the election of a member of the house of delegates or a State senator and shall fail to enter a final order in such proceedings settling all questions presented therein within fifty days from the commencement of such proceedings, unless delayed by proceedings of the supreme court of appeals, or a judge thereof in vacation, the same shall stand dismissed; and such board shall convene within not less than five days thereafter, and proceed forthwith to the performance of its duty under the provisions of said section. A mandamus shall lie from the supreme court of appeals, or any one of the judges thereof in vacation, returnable before said court, to compel any officer herein to do and perform legally any duty herein required of him. And respecting the election of a member of the house of delegates and state senator, a writ of certiorari, mandamus or prohibition shall lie from the said supreme court of appeals, or a judge thereof in vacation, returnable before said court, to correct any error of law and review and correct the proceedings of any circuit court or the judge thereof in vacation, or any board of canvassers. When any such writ of mandamus, prohibition or certiorari shall be issued by said court or a judge thereof in vacation, it shall be the duty of said court to convene in special session at the State capitol, not later than ten days from the date of the writ, to hear and determine all matters arising upon said writ, which matters shall have precedence over all other business pending in said court and be determined within five days from the assembling

thereof, and in any case, in ample time for the case to be remanded and final action taken by the circuit court and the board of canvassers, in order that such board may perform its duty and issue the certificate of election before the second Wednesday in January, then, next following. In mandamus and prohibition proceedings under this section the same may be upon affidavit alone, and no rule to show cause, nor alternative writ, shall be necessary.—[Marcum vs. Ballot Com., 42 W. Va. 26; Hebb vs. Clayton, 45 W. Va. 578; Dent vs. Board, 45 W. Va. 750; Alderson vs. Com., 31 W. Va. 633; Daniel vs. Sims, 49 W. Va. 554; Dunlevy vs. County Court, 47 W. Va. 513; Payne vs. Staunton, 55 W. Va. 201.]

Witness Compelled to Testify, Though Implicated.

90. Every person called as a witness as to any violation of any of the provisions of this chapter, shall be compelled to testify fully concerning the same; but if such witness testify fully, he shall be exonerated from such offense in which he is implicated, and shall not be prosecuted therefor.—[Acts 1891, ch. 89.]

The following ten sections from section 91 to 100, inclusive, were passed by the Legislature of 1905, on February 17, 1905, and are in effect May 17, 1905. See Chap. 43, Acts 1905.

(Sections 91 to 95, inclusive, are by implication repealed by chapter 19 of Acts of 1908, which is as follows:)

CHAPTER 19—ACTS 1908.

AN ACT to provide for the registration of voters.

[Passed March 3, 1908. In effect ninety days from passage. Approved March 4, 1908.]

SEC.

1. County court to appoint registrars for each precinct in the county; when registrar to be appointed; his duty; registrar to take oath that he will support the constitution of United States and state of West Virginia; oath to be filed with county clerk.
2. County court shall cause to be prepared books and blanks for the registration of voters; duty of clerk of the county court; how books to be arranged and what to contain.
3. Registrar's duty; authorized to administer oath; questions to be answered by persons desiring to register.
4. Person of foreign birth must show naturalization papers or certified copy thereof, except.
5. Registrars to immediately proceed

SEC.

- to register the names of the qualified voters as soon as appointed; registration to be completed before the first day of October; registrars to sit for amending and correcting the registration list, when; to give notice, time and place of such sitting; notice to be posted at each voting precinct.
6. Qualified voters may register at any time but not later than ten days before the election at which he desires to vote.
7. Registration books to be filed with clerk of the county court; when books to be filed; county court to convene; when and for what purpose; if county court shall erase any name, what then; county clerk to furnish copy of registration book to each voting precinct.

8. Any registrar who may wilfully or maliciously register the name of a person not a qualified voter, or refuse to register the name of a qualified voter, shall be deemed guilty of a felony; penalty.
9. No person shall be allowed to vote after the first registration has been completed unless he shall have been registered, except; penalty for commissioner violating any provision of this act.
10. Voter removed from precinct where registered may obtain certificate from county clerk to vote in another precinct; commissioner's duty.
11. Special elections; registrars to give notice as hereinbefore provided; county court's duty as to special election; county court or clerk to fill vacancy in office of registrar.
12. Registrar's compensation; by whom allowed; how cost of registration for special election to be paid.
13. Commissioners shall return registration books together with the ballot boxes, etc. to the clerk of the county court.
14. Inconsistent acts repealed.

Be it enacted by the Legislature of West Virginia:

Sec. 1. There shall be appointed by the county court of each and every county in the state, not later than the first day of September in each and every year when there is a general election to be held, one competent voter to be styled the registrar for each voting precinct in the several counties of the state. The registrar shall register as hereinafter provided the male citizens who are entitled to vote under the laws of this state. Said registrars shall each, before entering upon the discharge of their duties take an oath to support the constitution of the United States and the constitution of the state of West Virginia, and to perform the duties of his office to the best of his ability. Said oath shall be filed in the office of the clerk of the county court.

Sec. 2. The county court shall cause to be prepared suitable books and blanks for the registration of voters and the facts required by this act, and the clerk of the county court shall distribute said books and blanks to the registrars of the respective voting precincts. The book aforesaid shall be so arranged as to admit of the alphabetical classification of the names of voters and ruled in parallel columns on which shall be entered first, the name of the person registered; second, age; third, the place of his birth; fourth, the time of his residence in the precinct, district, county and state; fifth, if naturalized, the date of the papers and the court by which issued.

Sec. 3. Before any registrar shall register the name of any person as a qualified voter, he must be satisfied of his qualification as herein provided and for this purpose he is hereby given authority to administer oaths and may require the person desiring to register to answer under oath the following questions:

First—Are you a citizen of the United States?

Second—Are you a native or naturalized citizen?

If the person offering to be registered claims to be a naturalized citizen of the United States he shall produce, for the inspection of the officer of registration, a certificate or other evidence of his naturalization, and also state under oath or affirmation that he is the identical person named therein; but the production of the certificate shall not be required if the person offering to be registered states under oath, when and where he

was naturalized, that he has had a certificate of naturalization, and that against his will the same was lost, destroyed or beyond his power to produce the same; or if he states under oath that by reason of the naturalization of his parents, or one of them, he has become a citizen of the United States, and where or when his parents were naturalized.

Third—Will you have resided in this state for one year immediately preceding the coming election?

Fourth—Have you been absent from this state within the year immediately preceding the coming election? (If yes, when?)

Fifth—When you left this state did you leave for a temporary purpose with the intention of returning; or for the purpose of remaining away?

Sixth—Did you while absent look upon or regard this state as your home?

Seventh—Did you while absent vote in any other state?

Eighth—Will you have resided in this county for sixty days prior to the coming election?

Ninth—When did you last come into this county?

Tenth—When you came into this county, did you come for a temporary purpose or for the purpose of making it your home?

Eleventh—Did you come into this county for the mere purpose of voting in this county?

Twelfth—Did you come into your precinct merely for the purpose of voting in it?

Thirteenth—Are you an actual resident of that precinct?

Fourteenth—Are you twenty-one years of age, or will be such, at the coming election, to the best of your knowledge and belief?

He shall also put such other questions to the persons offering to be registered as may be necessary to test his qualifications as a legal voter at the coming election, or require such additional evidence as he may deem necessary. Every person shall be registered who will be entitled to vote at the first election occurring after the registration, by reason of his arriving at twenty-one years of age before the time, or by reason of his having resided for a sufficient length of time in the state and county, provided if otherwise qualified.

Sec. 4. The registrar shall not allow the name of any foreign born resident or citizen qualified as aforesaid to be registered unless his naturalization papers or certified copies thereof be produced and exhibited to him, except as otherwise herein provided.

Sec. 5. The registrars shall immediately upon receipt of notice of their appointment, proceed to register the names of the qualified voters within their respective election precincts in accordance with the provisions of this act, and shall have such registration completed on or before the first day of October, in each year in which there is a general election to be held: *provided*, that in any year in which a general election is to be held, after the year nineteen hundred and eight, the said registrar shall transfer from the registration books for the preceding year in which an election was held, the names of all qualified voters of said precinct, appearing on said books which shall be a sufficient registration of such voter.

They shall also sit for the amending and correcting the registration list beginning October tenth (Sunday excepted), giving one day for that purpose, and they shall give notice of the time and place of sitting for registration and correction at least ten days previous thereto, by posting printed notices at each of said voting precincts; and the county court may, if it deem proper, publish the same in some county paper.

Sec. 6. Qualified voters may be registered at any time after the regular appointed days of registration are past, but not later than ten days before any election at which such person may desire to vote (except as hereinafter provided), by his application to the proper registrar or the county court.

Sec. 7. At least fifteen days preceding the next election after the registration of voters under this act and at least fifteen days preceding any general election thereafter, the registrar shall make and file with the clerk of the county court two copies of the registration books. It shall be the duty of the county court to convene in special session on the last Monday of October preceding any general election to examine such books, and if they are satisfied that persons have been registered who are not entitled to vote, they shall cause their names to be stricken from the list of voters; and if they should find that persons' names have been omitted by the registrars who should be registered, the court shall cause their names to be entered as qualified to vote; but in no case shall the court erase the name of any voter until he shall have due notice of the time and place of taking the evidence to prove his disqualification, which evidence he shall have the right to rebut, and shall have his name restored to such list if improperly stricken therefrom. And the clerk of the county court shall furnish one of said copies to the election commissioners of the respective voting precincts with the ballot boxes and other election supplies for use by them in conducting the election in said voting precincts.

Sec. 8. Any registrar who shall wilfully or maliciously register the name of any person not a qualified voter of said precinct or reject from registration the name of any qualified voter of the precinct contrary to the provisions of this act shall be deemed guilty of a felony and upon conviction therefor shall be confined in the state penitentiary not less than one, nor more than five years, or fined not less than fifty, nor more than five hundred dollars at the discretion of the court.

Sec. 9. No person shall be allowed to vote at any election hereafter held in this state after the first registration shall have been completed according to the provisions of this act, unless he shall have been registered, (except as hereinafter provided), and the commissioners of every election shall allow only those to vote whose names shall appear on the registration book returned by the proper registrar (except as hereinafter provided); and any commissioner who shall wilfully violate any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than fifty nor more than one hundred dollars, or imprisoned not less than ten nor more than ninety days in the county jail, or both, at the discretion of the court, for every such offence.

Sec. 10. Any voter who shall have been registered in any precinct as

hereinbefore provided, and shall have removed from such precinct to another precinct within the same county, may obtain a certificate from the registrar of the precinct in which he has registered, or from the clerk of the county court in case the registration books have been filed with such clerk, and present the same to the election commissioners of the precinct wherein he resides, and if such commissioners shall be satisfied that such voter has a legal residence in the precinct wherein he offers to vote, they shall register such voter and allow him to vote. When such certificate is issued the name of such voter shall be stricken by the registrar or clerk from the book from which such certificate is issued.

Sec. 11. In case any special election is called and held, the registrars appointed prior to the preceding general election shall give the notice hereinbefore provided for and shall register the voters in their respective precincts as hereinbefore provided at least fifteen days before such special election is held, and make and file two copies of their registration books with the clerk of the county court not later than ten days before such special election, and the county court shall at a special session held on the fifth day before such special election examine such books and otherwise proceed in regard to the same as provided in section seven of this act; and the clerk of the county court shall furnish such books to the election commissioners as provided in said section for any such special election. For the purpose of this section the county court or clerk thereof in vacation shall fill any vacancy in the office of registrar caused by death, resignation or removal from the voting precinct of any registrar.

12. The said registrar shall receive as compensation for their services under this act the sum of ten cents for each name so registered by them, to be allowed by the county court, payable out of the county treasury. But if the registration of voters is made necessary by the calling of a special election in a district, independent district, or municipality, the compensation therefor shall be paid by the board or body calling the said election, out of any funds at their disposal.

Sec. 13. The commissioners of election shall return the registration books of such election precinct, together with the ballot boxes, etc., to the clerk of the county court.

Sec. 14. All acts and parts of acts inconsistent with this act are hereby repealed.

96. If the person offering to be registered refuse to answer fully any question put to him, as hereinbefore provided, his name shall not be listed among the legal voters; if any person refuse to take the oath so required of him in the preceding section his name shall be rejected, but if he afterwards appears before the commissioners at the polls and make the affidavit required by them, then he shall be listed and be permitted to vote.—[Acts 1891, ch. 89; Acts 1905, ch. 43.]

What Constitutes Residence.

97. The officer of registration in determining the residence of any person, offering to be registered, shall be governed by the following rules, so far as the same may be applicable:

I. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

II. A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes, with the intention of returning.

III. A person shall not be considered to have gained a residence in any county of this state into which he comes for temporary purposes, without the intention of making such county his permanent home.

IV. If a person move into another state, with the intention to make it his permanent residence, he shall be considered to have lost his residence in this state.

V. The mere intention to acquire a new residence, without removal, shall not constitute non-residence, neither shall the removal, without the intention to acquire a new residence, constitute non-residence.

VI. If a person go into another state, and while there exercise the right of a citizen by voting, he shall be considered to have lost his residence in this state.

VII. All questions of the right to be registered shall be heard and determined by the officer of registration, the commissioners at the polls or other officer before whom said affidavit is made.—[Acts 1891, ch. 89; Acts 1905, ch. 43.]

Penalties for Violating the Registration Laws.

98. If any person swear falsely, or make a false affidavit pertaining to the registration of his vote or the vote of another, he shall be guilty of perjury, and on conviction thereof shall be confined in the penitentiary of this state for not more than three years; and if any officer of registration or other officer shall register or cause to be registered any person who is not entitled to be registered, or refuse to register any person who is entitled to be registered, knowing the same to be true, shall be guilty of felony, and on conviction thereof, shall be confined in the penitentiary for not more than two years.

The affidavits taken by election commissioners, or others authorized to administer oaths, of persons desiring to be registered shall be preserved as other affidavits taken by them and delivered in the same manner to the clerk of the circuit court of their county, who shall present them to the grand jury of his county for investigation.—[Acts 1891, ch. 89.]

99. It shall be the duty of the judge of every court, in which a grand jury is empanelled, to give thereto instructions in regard to elections as the court deems advisable.—[Acts 1891, ch. 89; Acts 1905, ch. 43.]

Receiving Bribe.

100. If any voter, directly or indirectly, by himself or through any other person, receives, agrees or contracts for, before, during or after the election, any money, gift, loan or other valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election, or for not voting or agreeing to vote, or refraining or agreeing to refrain from voting for any particular person or persons, or proposition or

question at any election, shall be guilty of a misdemeanor, and on conviction thereof shall be disfranchised for not more than ten years, for the first offence, and for a second offence he shall be disfranchised during life. Any voter asking or soliciting money from any candidate, before any primary or any election, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five nor more than fifty dollars and, upon failure to pay said fine, shall be confined in the county jail not to exceed sixty days.—[Acts 1905, ch. 43.]

CHAPTER 22—ACTS 1908.

AN ACT to prevent corrupt practices in election, to limit the expenses of candidates, to prescribe the duties of candidates and political committees and provide penalties and remedies for the violation of this act.

[Passed February 25, 1908. In effect ninety days from passage. Approved March 3, 1908.]

- | SEC. | SEC. |
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| 1. Who deemed guilty of bribery at elections; penalty; law shall not be construed to extend to money paid on account of proper expense; proper expenses defined. | 9. No person to receive any salary, etc. prior to filing of statement. |
| 2. Persons also deemed guilty of bribery in elections; penalty; when person not to be prosecuted; when person making false charge deemed guilty of felony. | 10. What deemed a political committee. |
| 3. When person deemed guilty of misdemeanor for corruptly influencing voter by certain methods. | 11. Political committees to appoint and constantly maintain a treasurer; duty of treasurer; unlawful acts. |
| 4. Penalty for person to inflict or threaten any damage to voter to compel him to vote for any person or candidate. | 12. Duty of treasurer of political committee as to keeping of statements. |
| 5. Penalty for person deemed guilty of impersonation or person applying for ballot for own use after voting once. | 13. Treasurer to file statement in office of county clerk; what statement to set forth. |
| 6. Penalty for candidates for office, to be filled by popular vote, to expend any money, etc. to secure aid in securing nomination or election; except certain sum determined upon; basis of assessment. | 14. Every clerk of the county court shall receive and file statement; to be kept on record, subject to public inspection; certified copies of statements admitted as evidence in all courts. |
| 7. Time for holding caucus, convention or primary to nominate candidate for certain offices; statement to be made out and filed, with whom; what to show. | 15. Treasurer deemed guilty of misdemeanor if he fail to file report with county clerk. |
| 8. Penalty for failure to comply with the provisions of section seven. | 16. Treasurer deemed guilty of misdemeanor for committing certain offences. |
| | 17. No life insurance company, etc. to give directly or indirectly any sum of money or other thing of value to any candidate for nomination or election; penalty. |
| | 18. Penalty for violation of act not specifically provided for. |
| | 19. Judge of circuit and criminal courts to give this act in charge to all grand juries. |
| | 20. Inconsistent acts repealed. |

Be it enacted by the Legislature of West Virginia.

Sec. 1. The following persons shall be deemed guilty of bribery at elections and shall be punished as in this section provided.

First. Every person who shall directly or indirectly, by himself or by other person on his behalf, give, lend, or agree to give or lend or offer, promise, or promise to procure or endeavor to procure any money or valuable consideration or any place or employment, public or private, to or for any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote or refrain from voting or to vote for any particular person or candidate, or object, or refrain therefrom or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at an election, or having voted for any particular person or candidate or object, or refraining therefrom.

Second. Every person who shall in consequence of any gift, loan, or offer, promise of any place or employment public or private, procurement, or agreement, procure or engage, promise or endeavor to procure, the election of any person to a public office, or the vote of any voter at any election.

Third. Every person who shall advance or pay or cause to be paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money wholly or in part expended in bribery at any election; any person so offending shall be guilty of a misdemeanor and may be punished by imprisonment in the county jail for a term of not less than six months or more than one year, at the discretion of the court, and be fined not more than one thousand dollars, and shall in addition thereto forfeit his office. If any person, or committee or representative of any church, school, charitable institution or religious society shall knowingly solicit a candidate for office or a candidate for nomination to any office, to give, lend, or agree to lend, offer, promise, or promise to procure any money or valuable consideration for use of himself or other person, or for said church, school, charitable institution or society, the person or persons so offending shall be guilty of misdemeanor and fined not exceeding one hundred dollars.

Provided, always, that the foregoing enactment shall not extend to or be construed to extend to any money paid or agreed to be paid for or on account of any proper expenses incurred at or concerning any election.

Proper expenses are herein defined to be such as are or may by reasonable construction be included only in the following, that is to say:

First. For the personal traveling expenses of the candidate.

Second. For the reasonable rent of hall or room for the delivery of speeches relative to principles of candidates in any pending election.

Third. For the payment of reasonable compensation to public speakers and musicians at public meetings and their necessary traveling expenses.

Fourth. Printing and distribution of list of candidates or sample tickets, speeches or addresses by pamphlets, newspapers or circulars relative to candidates or political issues or principles, cards, hand-bills, posters or announcements.

Fifth. For copying and classifying poll lists.

Sixth. For making canvasses of voters.

Seventh. For expressage or freight or charge for other like purpose, and for postage, telegraph, telephone, or other public messenger service.

Eighth. For reasonable clerk hire at the headquarters or offices of campaign committees, or at the office of the candidates.

Sec. 2. The following persons shall also be guilty of bribery at elections and shall be punished as in this section provided:

First. Every voter who shall, before or during any election, directly or indirectly by himself, or by another person on his behalf, solicit, demand, receive, agree or contract for any money, gift, loan, or valuable considerations, office, place or employment, or solicit any endorsement on a note or other paper public or private for himself or for any other person, for voting or agreeing to vote, or for voting for any person or candidate or object or agreeing to refrain therefrom, or from refraining or agreeing to refrain from voting at any election.

Second. Every person who shall, after any election, directly or indirectly by himself, or any other person on his behalf solicit, demand or receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election, and any person so offending shall be guilty of a misdemeanor and may be punished by imprisonment in the county jail, at the discretion of the court, for not more than six months and be fined not more than one hundred dollars. But if such voter or person mentioned in this section shall testify and speak the truth on behalf of the state in any prosecution against the giver or promiser, he shall not be prosecuted for any offence under this section.

Any person who shall make a false charge under oath or give false evidence against a person who has been a candidate for office and who has received the majority of the votes cast for the office for which such person was a candidate at any election, held in this state, and any person who shall give false evidence either in the form of an affidavit or as a witness before any court, or in any impeachment proceeding against any candidate, and any persons who shall form a conspiracy or assist in the formation thereof or become conspirators against any candidate to wrongfully deprive such candidate of the office for which he has received a majority of the votes cast for such office, shall be guilty of a felony and upon conviction thereof be confined in the penitentiary of this state not less than five nor more than ten years. Conspirators within the meaning of this section shall include each person who shall become engaged with another or others, in an effort to wrongfully deprive a person of the office for which such person had received a majority of the votes cast for such office.

Sec. 3. Any candidate for a public office, or any other persons seeking to become the nominee of any party as such candidate, who prior to any primary election, convention, or other meeting held to select delegates to a convention to nominate a candidate for the public office which he seeks to obtain, or who, at any time prior to the election whereat an incumbent for the office so sought by him is chosen, corruptly by himself,

or by any other person, directly or indirectly, gives or provides or pays, wholly or in part, or promises to pay wholly or in part the expenses of going to such election, primary election, convention, or other meeting, or providing any meat, drink, entertainment, or provisions to or for any person for the purpose of corruptly influencing him, or any other person to give or refrain from giving his vote at such election, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars.

Sec. 4. Every person who shall directly or indirectly, by himself or any person on his behalf, make use of, or threaten the use of any force, violence or restraint or inflict or threaten to inflict by himself or by any other person, any damage, harm, or loss upon or against any person, in order to induce or compel such person to vote or to vote for any person or candidate or object or to refrain therefrom or refrain from voting at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede and prevent the free exercise of the franchise of any election shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars.

Sec. 5. A person shall for all purposes of this act, be deemed guilty of the offence of impersonation who at any election held pursuant to the laws of this state, applies for a ballot in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any election applies at the same election for a ballot in his own name or in any other name for his own use; and any person who commits the offence of impersonation, or who aids, abets, counsels or procures the commission of that offence shall be guilty of a misdemeanor and upon conviction thereof shall be confined in the county jail for a term of not exceeding one year.

Sec. 6. No candidate for congress or for any public office in this state, or any county, district or municipality thereof, which office is to be filled by popular election, shall by himself, by or through any agent or agents, committee or organization, or any person or persons whatsoever, in the aggregate, pay out or expend, or promise or agree or offer to pay, contribute or expend any money or other valuable things in order to secure or aid in securing his nomination or election respectively, to any office to be voted for at same election, or in aid of any party or measure in excess of a sum to be determined upon the following basis, namely:

For five thousand voters or less, two hundred and fifty dollars; for each one hundred voters over five thousand and under twenty-five thousand, two dollars for each one hundred voters; over twenty-five thousand and under fifty thousand, one dollar; and for each one hundred voters over fifty thousand, fifty cents. The number of voters to be ascertained by the total number of votes cast for all the candidates for such office at the last preceding regular election held to fill the same, and any payment, contribution, or expenditure, or promise, agreement, or offer to pay, contribute or expend any money or valuable thing in excess of said sum, for such objects and purposes, is herein declared unlawful and any person violating the provisions of this section shall be deemed guilty of a misdemeanor and be fined not less than two hundred and not more than five hundred dollars.

Sec. 7. Every person who shall be a candidate before any caucus or convention, or at any primary election, for nomination of candidates for representatives in the congress of the United States, and all state, county and district officers, which caucus, convention or primary election shall be held not earlier than the fifteenth day of May, nor later than the fifteenth day of August next preceding a general election, or at any election for any state, county, or district office, or for senator or representative in the congress of the United States, shall within thirty days after the election held to fill such office or place, make out and file with the officers employed by law to issue the certificate of election to such office or place and a duplicate thereof with the clerk of the county court for the county in which such candidates reside, a statement in writing, which statement shall be subscribed and sworn to by such candidate before an officer authorized to administer oaths, setting forth in detail all sums of money contributed, disbursed, expended or promised by him to the best of his knowledge and belief by any other person or persons in his behalf, wholly or in part, in endeavoring to secure or in any way in connection with his nomination or election to such office or place, or in connection with the election of any other person at said election; and showing the dates when, and the persons to whom, and the purpose for which all such sums were paid, expended, or promised. Such statement shall set forth that the same is as full and explicit as affiant is able to make it.

Sec. 8. Any person failing to comply with the provisions of the foregoing seventh section of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars.

Sec. 9. No person shall receive any salary or any emoluments for any period prior to the filing of said statement provided for in section seven.

Sec. 10. Every two or more persons who shall be elected, appointed, chosen, or associated for the purpose, wholly or in part, for raising, collecting or disbursing money or controlling or directing the raising, collection or disbursement of money for election purposes, and every two or more persons who shall cooperate in the raising, collection or disbursements, or in controlling or directing the raising, collection or disbursement of money, used or to be used in the furtherance of the election, or defeat the election to public office of any person or any class or number of persons, or in the furtherance of the enactment or to defeat the enactment of any law or ordinance or constitutional provision, shall be deemed a political committee within the meaning of this act.

Sec. 11. Every political committee shall appoint and constantly maintain a treasurer to receive, keep and disburse all sums of money which may be collected or received or disbursed by such committee, or by any of its members for any of the purposes mentioned in section ten of this act; for which such committee exists or acts, and unless such treasurer is first appointed and thereafter maintained, it shall be unlawful and a violation of this act for a political committee or any of its members to collect, receive, or disburse moneys for any such purpose. All money collected or received or disbursed by any political committee, or by any member or members thereof, for any of the purposes mentioned in section

ten of this act, and for which said committee exists or acts, shall be paid over and made to pass through the hands of the treasurer of such committee and shall be disbursed by him; and it shall be unlawful and a violation of this act for any political committee, or for any member or members of a political committee to disburse or expend money for any of the objects or purposes mentioned in section ten of this act, and for which such committee exists or acts, until the money so disbursed or expended shall have passed through the hands of the treasurer of said political committee.

Sec. 12. Every treasurer of a political committee and every person who shall at any time act as such treasurer shall, whenever he receives or disburses money as such treasurer or for or on account of any of the objects or purposes mentioned in section ten of this act, immediately enter and thereafter keep in a proper book or books to be provided and preserved by him, a full, true and detailed statement and account of each and every sum of money so received or disbursed by him setting forth in such statement the sum so received or disbursed, as the case may be, and the date when and the person from whom received, or to whom paid, as the case may be, and the object and purpose for which such sum was received or disbursed.

Sec. 13. Every treasurer of a political committee as defined in this act and every person who acts as such treasurer, shall, within thirty days after each election whether state, county, or district election, in or concerning or in connection with which he shall have received or disbursed any money for any of the objects or purposes mentioned in section ten of this act, prepare and file in the office of the county clerk of the county court in which such treasurer resides a full, true and detailed account and statement, subscribed and sworn to by him before an officer authorized to administer oaths, setting forth each and every sum of money received or disbursed, by him for any of the objects or purposes mentioned in section ten of this act, within the period beginning four months before such election and ending on the day on which such statement is filed, the date of each receipt and each disbursement, the name and address of the person from whom received or to whom paid, and the object or purpose for which the same was received and the object or purpose for which it was disbursed. Such statements shall also set forth the unpaid debts and obligations, if any, of such committee, with the nature and amount of each, and to whom owing, in detail, and if there are any unpaid debts or obligations of such committee, such statement shall state such facts.

Sec. 14. Every clerk of the county court in each of the counties of this state shall receive and file in his office and there keep as a part of the records thereof, all statements and accounts required by this act to be filed with him; and the same shall be recorded in a well bound, suitable record book to be kept in his office as a part of the records therein. Such statements and accounts and record book shall at all reasonable times be open to public inspection. Copies of such statements or records certified by such clerk, of any such statement or statements or records, shall be admitted to evidence in all courts with like force and effect as the original would have if produced.

Sec. 15. Every treasurer of a political committee, as defined in this act, who shall wilfully fail, neglect or refuse to make out, verify and file with the clerk of the county court the statement required in this act, shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars or more than five hundred dollars.

Sec. 16. Every treasurer of political committee and every person who shall receive any money to be applied to any of the purposes mentioned in section ten of this act who shall either:

First. Neglect or fail to keep a correct book or books of account, setting forth all the details required to be set forth in the account and statement contemplated by this act, (except that the book or books need not be subscribed or sworn to) with intent to conceal the receipt or disbursement of any sum received or disbursed by him, or by any other person for the purpose or object for which the same was received or disbursed or conceal the fact that there is any unpaid obligation of such treasurer of such committee, or the nature or amount thereof, or to whom owing in detail; or,

Second. Mutilate, deface or destroy any such book or books of account with intent to conceal any fact by such book or books, shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars or more than five hundred dollars.

Sec. 17. No life or fire insurance company, railroad, telegraph, express, telephone, coal, oil, gas company, or any other corporation or joint stock company or association, shall directly or indirectly, give or offer to give, contribute or offer to contribute, any money, or other thing of value or profit to any candidate for nomination for, or election to any office embraced within this act, and any violation hereof shall be a misdemeanor and upon conviction thereof such life, or fire insurance company, railroad, telegraph, express, telephone, coal oil or gas company or other corporation, shall be fined not exceeding one thousand dollars.

Sec. 18. Any violation of any of the provisions of this act the penalty for which is not herein specifically provided for, shall be deemed a misdemeanor, and shall be upon conviction, punished with a fine of not to exceed one hundred dollars.

Sec. 19. The judges of all circuit and criminal courts in this state shall give this act in charge to all grand juries empanelled in their respective courts.

Sec. 20. All acts or parts of acts inconsistent with this act are hereby repealed.

GENERAL INSTRUCTIONS.

[Agreed upon by the chairman of the Republican and Democratic State Executive Committees.]

Ballot Commissioners.

The number of ballot commissioners, the number of ballots to be printed and the duties of the ballot commissioners are found in sections 32 to 34.

Commissioners of Election.

At each precinct there shall be three commissioners of election, whose duty is to conduct the election at that precinct in connection with the clerks and challengers.—[See sections 7, 8 and 48.]

Persons Who Cannot Act as Challengers.

1st. A person not of good standing or character and addicted to drunkenness.

2nd. One who has anything of value bet or waged on the result of the election.

3rd. A candidate to be voted for at such election.

4th. A person who has in his employ, or who as agent or superintendent has under his control or management ten employes who are legal voters.

Nor can any person disqualified as above serve in any way as commissioner.—[See Secs. 7, 8.]

Failure of Commissioners to Serve or Attend.

If none of the commissioners of election appear at the hour appointed for the opening of the polls ten qualified voters of the election precinct present may by a viva voce vote appoint three persons to act, providing that not more than two of said commissioners belong to the same political party.

If one commissioner or two commissioners fail to appear the others may select another person to serve to fill the vacancy, provided that the person so selected is a member of the same political party as the one failing to appear, and always provided that the qualified voters of the party of which the absent commissioner is a member may nominate a voter of such party qualified to act, in which event it shall be the duty of the remaining commissioners, regardless of their own wishes, to appoint such commissioner or commissioners.

It is the object and purpose of the law to have both political parties represented at the election and it is clearly against the spirit of the law and against the plain letter of the law to have three commissioners of election belong to the same political party.

Poll Clerks.

The poll clerks may be appointed by the commissioners of election provided the voters present of each political party do not name a person to serve for such political party. The Democratic voters present have the right to name a Democrat to act as poll clerk and the Republican voters present have the right to name a Republican to act as poll clerk, and when such designation is made it is the duty of the commissioners of election to recognize each and both of such persons so designated and appointed. But if a dispute shall arise as to the nominations made by the voters present then the Democratic commissioner or commissioners shall appoint a Democratic poll clerk and the Republican commissioner or commissioners shall appoint a Republican poll clerk. The statute gives this right to each political party which casts the largest number of votes at the next preceding election.—[See Sec. 8.]

Challengers.

The county executive committee of each of the two political parties which cast the largest number of votes at the last general election or the chairman of such committee has the right to appoint a qualified voter in the election precinct to act as challenger. This challenger is an officer of the election and is required to be sworn.—[See Sec. 48.]

If the chairman of the executive committee of such party shall fail to make the appointment the Democratic voters present may make the appointment on behalf of the Democrats and Republican voters present may make the appointment on behalf of the Republicans.—[See Sec. 48.]

Duties and Rights of Challengers.

The challenger is entitled to remain in the election room from the opening of the polls until the counting, ascertainment and the declaration of the result.—[See Sec. 48.]

The challenger is charged with the duty, and it is his undoubted right to remain in the election room from the beginning to the end. He has a right to challenge voters, to be heard on any question concerning the right of a voter to cast his vote in that precinct, or in regard to any other matter concerning the right of a voter. And it is his privilege and duty to watch the counting of the votes and the declaration of the result. He is as much an officer and entitled to the same protection as the commissioners or a poll clerk. He is a sworn public officer charged with the duty and entitled to rights clearly and specifically defined by the law.—[See Secs. 48, 49.]

Penalties.

Any failure of any election officer to comply with the provisions of the statute makes him liable to heavy penalties, all of which are enumerated in the statute, and the election officers are especially requested to become familiar with the election law and note carefully their duties in each individual instance.





GAYLORD BROS.
MAKERS
SYRACUSE, - N.Y.
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